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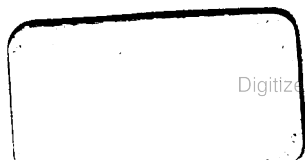
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The Author

A HISTORY
OF THE
CONSTITUTION OF MASSACHUSETTS

BY
SAMUEL ELIOT MORISON

**REPRINTED FROM THE MANUAL FOR THE CONSTITUTIONAL
CONVENTION OF 1917**

BOSTON
WRIGHT & POTTER PRINTING CO., STATE PRINTERS
32 DERNE STREET
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HISTORY OF THE CONSTITUTION OF MASSACHUSETTS.

The fundamental law of Massachusetts is rooted well back in the past. The Constitution of 1780 is still in force in its essential principles; and these principles are derived in part from the Colony charter of 1629 and the Province charter of 1691.

I.

THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY (COLONY CHARTER), 1629-1686.

Many of the political institutions of the Massachusetts Colony were the outgrowth of the charter of a business corporation. In granting articles of incorporation to trading companies operating in sections of the Empire in which no government owing allegiance to England had been established, it was the policy of the Crown to empower such companies not only to trade but also to make settlements and exercise political authority in those districts. These trading charters are the parents of the American State constitutions. Such a company was organized in London by a number of small investors in 1628. It obtained "all that part of New England in America" lying between parallels three miles north of the Merrimac and three miles south of the Charles. The next year it secured a royal charter from Charles I, dated March 4, 1629, constituting it the Governor and Company of the Massachusetts Bay in New England.

This charter followed the lines of other charters to joint-stock corporations. The stockholders were called freemen of the corporation. They were to elect their officials by ballot on the "last Wednesday in Easter tearme yearly," — the origin of our annual elections at fixed dates. The officials consisted of a Governor, Deputy Governor, and Assistants, corresponding to

the president, vice-president, and directors of a business corporation. Stockholders and officials must assemble at certain intervals in a "Greate and Generall Courte," with power "to make, ordeine, and establishe all manner of wholesome and reasonable orders, lawes, statutes," etc., and appoint all minor officials, for the governing of the plantation in Massachusetts Bay; likewise to "incounter, expulse, repell, and resist by force of armes, aswell by sea as by lande, and by all fitting waies and meanes whatsoever, all such person and persons as shall at any tyme hereafter attempt or enterprise the destruction, invasion, detriment, or annoyance to the said plantation or inhabitants."¹ The Governor, Deputy Governor, and Assistants constituted the directors' meeting of the corporation, known as the Court of Assistants, to meet at least once a month.

The apparent liberality of this charter is explained by the fact that the Massachusetts Bay Company, like the Virginia Company and other mercantile corporations, was expected to remain in London under the royal observation, there hold its General Courts and directors' meetings, thence to send out employees to govern its plantations in Massachusetts. Thus British India was governed, as late as 1773, by the East India Company in London.

At first the Massachusetts Bay Company obeyed the rules of the game. The General Court, meeting in London, sent out a company of emigrants to Salem under John Endicott, who was the company's representative. But shortly after securing the royal charter the Puritan stockholders of the company decided upon a revolutionary move. Wishing themselves to emigrate, they decided to take their government with them. Royal charter, Governor Winthrop, Deputy Governor Dudley, Assistants, and freemen were transferred from England to the soil of Massachusetts Bay by the ship "Lady Arabella" in the spring of 1630. The Court of Assistants met for the last time in England on board the emigrant ship, in Cowes Harbor, on March 23. The next entry is at Charlestown, five months later. By the single act of transfer capitalists became colonists, and the charter of a business corporation became the constitution of a semi-independent Commonwealth.

¹ Cf. present Constitution, Chapter II, Section I, Article VII.

To adjust the charter to the exigencies of governing a Bible Commonwealth required much ingenuity. Most interesting it is to trace the evolution of the General Court from a stockholders' meeting into a representative body, and finally a bicameral legislature. Representation came about through the inconvenience of assembling all the freemen in the General Court in person. Beginning with 1634, the freemen of every town sent one or two Deputies to act as their personal representatives. Deputies and Assistants sat as one House for ten years, exercising supreme legislative and judicial power. The Deputies, outnumbering the Assistants, wished laws to be passed by a majority of the whole; but in 1636 it was enacted that "no law, order or sentence shall pass as act of the Court without the consent of the greater part of the magistrates on the one part, and the greater part of the deputies on the other." In 1644, following an acrid dispute between magistrates and Deputies over the case of Goody Sherman and her stray sow, the General Court separated into two co-equal Houses, the House of Assistants and the House of Deputies. "The bicameral system in America had its origin in Massachusetts. It is here we find the specific mode and the successive steps by which it took its rise."¹

In 1636 the custom of two sessions annually, which lasted until 1831, was established. At the spring session, convening on the annual election day set by the charter, the Governor and magistrates were elected by the freemen and the government organized for the political year.² At the winter session most of the laws were enacted. The Assistants were the most powerful part of the colony government, since they constituted a superior court of judicature, an executive council, whose consent was required for every act of the government, and an upper branch of the Legislature. The Assistants, moreover, were magistrates or local judges. They would have preferred an election for life, but the charter provision for annual election prevented. However, the Assistants were annually renominated in order of their seniority, each freeman casting a grain of corn

¹ W. C. Morey in *Annals of the American Academy of Political and Social Science*, IV, 212.

² The Deputies cast the ballots of those freemen who did not come up to Boston to vote in person.

if he wished the candidate to be re-elected, or a black bean if he did not. Thus a new candidate could be nominated only if one of the existing incumbents were counted out. Long terms of office resulted, Simon Bradstreet being elected Assistant for forty-seven years, and then Governor for ten years. As the Governor and the Assistants were elected independently of the Deputies, they refused to consider themselves responsible to the General Court. Thus began the separation of the executive and legislative branches. Men were made freemen of the corporation, *i.e.*, voters, by special act of the General Court, and no one was eligible for the franchise save members of the Puritan churches.

Many other governmental problems had to be solved by the colonists, independently of the charter. The township system of local government, perhaps the greatest contribution of Massachusetts to political science, was established as early as 1634. A liberal system of land distribution was adopted, and land tenure was shorn of feudal dues and incidents. A unique relationship of church and State was worked out. The ministers, chosen by the congregations, were ineligible for political office, but their influence was great, and as a body their opinion was consulted on constitutional questions, as that of the Supreme Judicial Court is to-day. "Moses, his judicials," were originally declared the law code, but this gave such extensive power of interpretation to the judges that a primitive Bill of Rights, the "Body of Liberties," was established in 1641.

Within fifteen years of the transfer of the charter, the Governor and Company of the Massachusetts Bay had become a vigorous, efficient, and somewhat high-handed government, independent of England in all save name. According to modern standards it was not a democracy and was never so intended. But the Massachusetts Bay colonists enjoyed a greater measure of self-government than any people in the world outside New England. The Colony may best be described as an aristocratic republic. On account of the church-member franchise, and the earlier recognition of the Bible as part of the fundamental law, it is often compared to the theocratic government of ancient Israel.

II.

INTER-CHARTER PERIOD, 1686-1692.

Following various unsuccessful attempts of the Stuart kings to impose their policy on Massachusetts Bay, the Colony charter was cancelled by the High Court of Chancery on October 23, 1684. On May 21, 1686, the old General Court held its last meeting, and on May 25 Massachusetts was formally merged into the Dominion of New England. The Dominion was ruled by a President or Governor, and Council appointed by the King, all elections and representative institutions save the town meetings being abolished. When news arrived of the Revolution of 1688 in England, the people of Boston, on April 18, 1689, rose up against Governor Andros and imprisoned him in the fort on Castle Island. The Assistants elected in 1686 then took charge, and summoned a convention of Deputies from the towns, with whose permission (and subsequently the royal approval) they declared the old charter government provisionally restored.

III.

THE PROVINCE OF THE MASSACHUSETTS BAY (PROVINCE CHARTER), 1692-1774.

The inter-charter period ended and the Province period of Massachusetts history began on May 16, 1692, when Sir William Phips was sworn in as first royal Governor of Massachusetts Bay under the Province charter.

The Province charter, granted by William and Mary on October 7, 1691, annexed to Massachusetts the Colony of New Plymouth. The Pilgrim Colony, older than Massachusetts Bay, had hitherto pursued the quiet tenor of its way with no other constitution than the Mayflower Compact of 1620. The charter also annexed the islands of Nantucket and the Vineyard, and the present State of Maine, part of which had already been purchased by the Colony of Massachusetts Bay.

On the constitutional side, the Province charter was an attempt to compromise imperialism with colonial self-government. It was a grant of home rule, with several strings attached, — an independent Puritan foundation, with a new royal super-

structure. Various devices were employed to bind these unharmonious sections to one another and to the British Empire. All proved unavailing.

This new charter left intact the old system of local government and the lower House, now called the House of Representatives, of the "Great and General Court or Assembly," as the Legislature was now styled. A low property qualification replaced the religious qualification for the franchise, and the number and apportionment of representatives were left to the General Court. The old Board of Assistants was abolished, its judicial functions being given to a separate judiciary, organized by the General Court and appointed by the Governor. The Assistants' executive and legislative functions were granted to a Council of twenty-eight members. This provincial Council was annually elected, not by the people, but by the General Court, the outgoing Council taking part in the election of its successor, and the Governor having a veto on the choice. The election of the Council took place at the beginning of the political year, which was slightly altered to the last Wednesday in May, at which date it remained until 1831. The Council was the upper branch of the Legislature and an advisory body to the Governor.

The General Court retained legislative power over the affairs of the Province. Its acts were subject to veto by the royal Governor, and, if contrary to the laws of England, to disallowance within three years by the Privy Council. Cases could also be appealed from the provincial judiciary to the Privy Council, which thus stood in much the same relation to Massachusetts as the Supreme Court of the United States to-day. Besides its general legislative powers, the General Court was given a right to create all the civil offices in the Province, except that of secretary, and make most of the appointments. Furthermore, there was no law or custom to prevent a member of the General Court from filling a place he had helped to create, even a seat on the Superior Bench.

At the head of the Province was the royal Governor, appointed by the King during his good pleasure. His Excellency was a more powerful and imposing personage than the Governor of the Colony. He had a full veto over legislation, was the

captain general of the militia, the chief executive officer of the Province, and the King's personal representative. By the so-called Explanatory Charter of 1725, the King granted him power to veto the choice of speaker by the House. His Honor the Lieutenant-Governor, also appointed by the King, succeeded to the functions though not the title of the Governor upon the latter's removal, absence, or death. In ordinary times he was frequently elected to the Council. The King also reserved to himself admiralty jurisdiction within the Province, in order to enforce the commercial acts of Parliament, which were passed with increasing frequency.

Yet with all these instruments royal control was never effective. The compromise between imperialism and self-government worked all in favor of the popular side. Owing largely to the Governor's dependence for his salary on the House of Representatives, the latter gradually acquired control of the Province. An unacceptable bill could escape veto by having His Excellency's salary attached to it as a rider. It could escape disallowance by the Privy Council in England by its operations being limited to two or three years. By having the major voice in the election of the Council, the House was able to control the whole General Court, and the General Court elected the Treasurer and Receiver-General, which gave it a control over appropriations as well as taxation. The Governor alone had the right to govern the militia, and "assemble in martial array and put in warlike posture the inhabitants" to "kill, slay, destroy," etc., the enemy; but all this cost money, which the General Court alone could or would furnish. Finally it came to pass that no force could be raised, or military officer be appointed, without the consent of the House; otherwise no pay was forthcoming for said force or officer. The Governor could dissolve a recalcitrant General Court, but a new one had to be elected the following spring. By about 1745 the royal Governor became little more than an administrative figurehead, dependent on his personal influence for what little power he was able to exert. This compromise was, needless to say, reasonably satisfactory to the people of Massachusetts; and the attempt of the ministers of George III to restore the balance in favor of imperialism caused the American Revolution.

IV.

COLONY AND STATE OF MASSACHUSETTS BAY (PROVINCIAL CONGRESS AND PROVINCE CHARTER RESUMED), 1774-1780.

The "five intolerable acts" of Parliament of 1774 included an act amending the Province charter by providing that henceforth the Council, instead of being elected by the General Court, should be appointed by the King's writ of mandamus. To this the people refused to submit. The last regular provincial General Court was dissolved by Governor Gage on June 17, 1774. During the summer the people broke up the courts and held county conventions, which resolved to ignore the "mandamus council," treat the act in question as unconstitutional and void, and send delegates to the Continental Congress at Philadelphia and to a Provincial Congress at Concord.

On September 1, 1774, Governor Gage issued writs for the election of a new General Court, to meet at Salem on October 5. On September 28, owing to the "many tumults and disorders," he cancelled the election. Ninety Representatives-elect met in spite of him at the appointed time and place, declared the Governor's action unconstitutional, resolved themselves into a Provincial Congress on October 7, and adjourned to Concord. There they were joined on October 11 by the delegates already elected to the Provincial Congress by order of the county conventions.

During the next nine months Massachusetts was governed by three successive Provincial Congresses. These were simply revolutionary conventions, — State editions of the Continental Congress at Philadelphia. Each town sent as many delegates as it liked. John Hancock was president of the First and Second Congresses, and Joseph Warren, who fell at Bunker Hill, was president of the Third Congress. While Governor Gage, in Boston, was attempting to suppress rebellion with the aid of his "mandamus council" and the redcoats, the Provincial Congress, meeting at Concord, Cambridge, and Watertown, governed the Province in revolution. On May 5, 1775, after Concord fight, it declared General Gage no longer the lawful Governor, and on June 20 it ordered the election of a regular General Court under the Province charter.

The House of Representatives thus elected met at Watertown on July 19, 1775, the Third Provincial Congress dissolving the same day. Two days later the House elected a Council of twenty-eight; and the full General Court thus formed resolved that "whereas the late Governor, Lieutenant-Governor or Deputy Governor of the Province have absented themselves, and have refused to govern the Province according to the Charter," the executive power, according to said charter, devolves upon the Council. The Province charter, amended by this legal fiction, was the constitution of the Colony and State of Massachusetts Bay from July 28, 1775, to October 25, 1780.

The old Province and regal forms were retained until June 1, 1776, when writs were first issued in the name of the "Government and People of the Massachusetts-Bay." "Colony of the Massachusetts-Bay" was the official title of the government until the Declaration of Independence was proclaimed from the balcony of the old State House, on July 18, 1776. For the next four years the title, with variations, was "State of Massachusetts-Bay (in New England)." The General Court was usually styled the General Assembly at this period.

This decapitated and republicanized royal charter did not make a successful constitution. A Council of twenty-eight members, fifteen of whom made the quorum, was too slow and unwieldy an executive, especially in war time. It was too fond of appointing its own members to salaried positions. Samuel Freeman, for instance, was at the same time member of the House from Falmouth (Portland), clerk of the House, register of probate, clerk of the superior court, clerk of the sessions, and justice of the peace. The judicial system set up by the General Court was so cumbrous and expensive that the towns of Berkshire County refused to recognize it, setting up local courts of their own. The towns, in fact, were the most powerful part of the government of Massachusetts during the Revolution. They held county and other conventions without any authority from the General Court, gave their representatives precise instructions, and insisted that many important matters, including all constitutional questions, should be referred back to them.

V.

THE MOVEMENT FOR A STATE CONSTITUTION, 1776-1780.

1. PRELIMINARIES.

Before the resumed Province charter had been in operation six months, the demand was made for a new State constitution. This movement originated in Berkshire County, which, on account of its poverty and remoteness, was more alive to the defects of the Provincial system than any other section of the State. It was led by the Rev. Thomas Allen of Pittsfield, a fighting parson who accompanied his flock to Bennington, and himself fired the first shot of the battle. For his straight thinking on constitutional questions, and his great influence on the movement, Thomas Allen deserves a high place in the history of Massachusetts.

7 "A memorial to the General Court from the town of Pittsfield," on May 29, 1776, insisted "that the people are the fountain of power;" that the old charter and compacts were dissolved by the war; and that the General Court had no right to impose any constitution over the people, much less the Province charter. Pittsfield requested the General Court to frame "a fundamental constitution as the basis and frame-work of legislation," and refer it to the people for their approbation; for only the consent of a majority can "give life and being to it." When we remember how slowly the modern idea of constitutional law developed, and that all the American State constitutions of 1776 were framed by legislative bodies and put in force without popular ratification, we can appreciate the forward-looking character of this Pittsfield memorial.

The Declaration of Independence so strengthened the constitutional movement that on September 17, 1776, the House requested the towns to vote whether or not they would grant it permission to go into convention with the Council to frame a constitution; and whether they wished it made public for the "inspection and perusal of the inhabitants before the ratification thereof by the Assembly." This was the first of eight occasions in the history of Massachusetts in which the people have been asked to decide for or against a constitutional convention.

Less than half the towns voted. Most of those that did were willing that the General Court should frame a constitution, provided it were made public not only for inspection and perusal but for ratification. At least two towns — Concord on October 21, 1776, and Acton on November 4 — laid down the principle that a constitution should be framed not by a legislature but by a convention of delegates elected for that purpose alone. Concord made a good argument for the principle,¹ and further specified that the delegates should be chosen by "the Inhabitants of the Respective Towns in this State being free & of twenty one years of age, and upwards." These are the earliest suggestions as yet discovered in American history of the perfected constitutional convention.

The House committee appointed to canvass these returns and bring in a resolve was so impressed by this suggestion that in January, 1777, it recommended a constitutional convention as subsequently called in 1779. But the General Court did not care to let the task out of its own hands. By a resolve of May 5, 1777, it requested the towns to instruct their representatives to the next General Court to form with the Council a constitutional convention. Not all the towns gave this permission. Boston, in particular, ordered its representatives to oppose a legislative convention. The General Court, it explained, would never "prevent the lately too prevalent custom of accumulating offices in one person," and forbid its own members "from accepting any." The General Court ignored these protests, resolved itself into a constitutional convention on June 17, 1777, appointed a joint committee to draft a constitution, and again went about its legislative business. The committee did not report until December. In January, 1778, House and Council again went into convention to discuss and amend the committee's report, and on February 28 the completed constitution was accepted, and submitted to ~~universal~~ suffrage for adoption or rejection as a whole by a two-thirds majority. It was the first American State constitution to be formally submitted for popular action.

¹ A part of the resolution adopted by the people of Concord is incorrectly printed in *The Debates of the Convention of 1853*, I, 823. The frontispiece of this volume is a reproduction of the record of the Concord town meeting. The original is in the State Archives of Massachusetts.

2. THE CONSTITUTION OF 1778, AND THE ESSEX RESULT.

The Constitution of February 28, 1778, was so imperfect that the Rev. William Gordon of Roxbury, chaplain of the House, publicly asserted that it had been framed with the express intention of having it rejected. (Shortly afterward the House dispensed with Dr. Gordon's services.) There was no Bill of Rights, which omission alone was enough to insure its rejection. There was a legislature of two branches, but the Senate was elected indirectly, and acted as the Governor's Council as well as upper House. The Governor had no veto power, and all his acts were limited by the advice and consent of the Senate, in which he had a seat and vote. The whole document was poorly arranged and loosely drafted. As Boston predicted, members of the Legislature were not forbidden to hold offices of their own creation. In one respect, however, the Constitution of 1778 was more liberal than that of 1780; there was no property qualification for the electors of Representatives, and the Senators were apportioned according to population, not taxable property.

The Constitution submitted to the people of Massachusetts in 1778 was rejected by the emphatic vote of 2,083 yeas to 9,972 nays. This decision was undoubtedly influenced by a pamphlet which appeared in April, generally called the *Essex Result*, as it was adopted by a convention of delegates from the towns of Essex County. The *Essex Result* was drafted by a twenty-seven year old lawyer of Newburyport, who subsequently became Chief Justice Parsons. He not only points out the defects in the Constitution of 1778 but undertakes to ascertain "the true principles of government" upon which he believed the Constitution of Massachusetts should be founded. Following Locke and the eighteenth-century philosophers, Parsons starts with the theory of popular sovereignty and natural rights. Some, like the rights of conscience, are inalienable, and are no proper objects for governmental action. These should be defined and retained in a Bill of Rights. Other rights must be given up to the supreme power of the State in order to enable it to protect the life, liberty, and property of the citizen. The great problem is to frame this government.

"Let the supreme power be so defined and balanced that the laws may have in view the interest of the whole; let them be wisely and consistently framed for that end, and firmly adhered to; and let them be executed with vigor and dispatch."

The last clause strikes a new note in American political theory. Americans, so far, had been more concerned with preventing tyranny than with promoting efficiency. Owing to their experience with royal governors and judges, they were suspicious of the executive and judicial branches. Virginia had intrusted her supreme power to the Legislature, which elected and largely controlled the Governor; Pennsylvania dispensed with the Governor and the upper House. But many of the leading thinkers among the patriots, notably John Adams, Thomas Jefferson, and James Madison, believed that the supreme power should be divided into a legislative, an executive, and a judicial power, each to be exercised by a different set of men, and all three co-ordinated by a series of checks and balances. Theophilus Parsons carried this doctrine a step further in the *Essex Result*. "The legislative power must not be trusted with one assembly. A single assembly is frequently influenced by the vices, follies, passions, and prejudices of an individual." It should be divided into two branches, one to represent the people at large, among whom "we shall find the greatest share of political honesty, probity and a regard to the interest of the whole;" the other branch to represent the property of the State, and to give a share in government to "gentlemen of education, fortune and leisure," among whom "we shall find the largest number of men, possessed of wisdom, learning, and a firmness and consistency of character." If each House has an equal voice, no law can be passed without the consent of a majority of "those members who hold a major part of the property," as well as a majority of the persons in the State. A Senate, furthermore, will be able to revise "crude and hasty determinations of the House."

Vigor and dispatch are the chief qualities to be aimed at for the executive. "It should be able to execute the laws without opposition, and to control all the turbulent spirits in the state, who should infringe them. If the laws are not obeyed, the legislative power is vain, and the judicial is mere pageantry."

Let the executive power, then, be vested in one Governor, to be elected by all the people of the State. Give him a complete negative on all laws. He should have a "privy council" to advise with, not chosen by himself but by the House out of the Senate. As this will be a sufficient check on him, he should have a permanent fixed salary, and not be dependent, like the old royal Governors, upon the bounty of the Legislature.

The judges also should be appointed during good behavior and have independent salaries. And as legislative appointment of judges has already proved unsuccessful, let them be appointed by the executive, but removable for misbehavior by the Legislature.

In descending from the general to the particular, the *Essex Result* was not so apt, proposing a complicated system of indirect elections through county conventions. But the pamphlet is nevertheless an interesting expression of those principles upon which the Constitutions of Massachusetts and the United States were founded, and an early product of the school of political thought that tamed and curbed the radical forces let loose by the American Revolution.

3. THE CONSTITUTIONAL CONVENTION OF 1779-1780.

The *Essex Result* wished the framing of a constitution to be postponed until the end of the war, and did nothing to promote the idea of the special constitutional convention; that was purely a popular movement. The General Court, which had voted down the idea two years before, was sufficiently chastened by the recent rejection to take it up again in the spring of 1779. A resolve of February 19 requested the people to decide in their spring town meetings whether they would empower their representatives to call a convention for the sole purpose of framing a constitution. The result was 6,612 yeas and 2,639 nays. Essex, Barnstable, and the Maine counties cast a light and unfavorable vote, while Boston and the three western counties of Worcester, Hampshire, and Berkshire cast a heavy and almost unanimously favorable vote.¹ The General Court then ordered the towns and plantations to elect as many delegates to the Convention as they

¹ Franklin and Hampden counties were not incorporated until 1811 and 1812.

were entitled to send representatives, and expressly provided that every resident freeman twenty-one years of age should vote. As a property qualification was then required for voting for representatives, the Convention rested on a wider electorate than the existing State government. It derived all its authority from the people, in the widest contemporary political sense of that word; and to the people its work was submitted. It cut loose completely from the State government, even to the extent of refusing to apply to it for pay and mileage.

This Convention of 1779-1780 had the greatest task of any constitutional convention in the history of Massachusetts, and performed it under peculiarly difficult circumstances. The period of its sessions, from September 1, 1779, to June 16, 1780, was perhaps the darkest of the Revolutionary War. A joint naval and military expedition, brought together by the State at great cost to dislodge the enemy from Maine, had ended in complete disaster. Sir Henry Clinton was conquering the Carolinas. Our French allies had not yet sent Rochambeau's army or De Grasse's navy. Washington was stalemated on the Hudson, his army undermined by sickness and desertion. State and nation were on the verge of bankruptcy. The Tories were taking heart, and the neutrals going over to their side. Yet at this crisis the State was able to assemble a Convention of 312 members, which, judged by its results, must unquestionably be called the greatest in its history.

.Boston sent James Bowdoin (who was elected president of the Convention), Samuel Adams, John Hancock, Samuel Allyne Otis, and John Lowell the elder; Roxbury sent Increase Sumner; Braintree, its favorite son, John Adams; Salem, John Pickering, William Pickman, and Henry Higginson; Newburyport, Jonathan Jackson, Nathaniel Tracy, and the author of the *Essex Result*; Beverly, George Cabot; Groton, James Sullivan; Worcester, Levi Lincoln the elder; Springfield, Luke Bliss and William Pyncheon; Northampton, Caleb Strong, who holds the record for length of term as Governor of the Commonwealth; Scituate, Judge William Cushing; Taunton, Robert Treat Paine the signer; York, Judge David Sewall; and Brimfield, Timothy Danielson. Hardly an eminent patriot in the State, who was not serving in some other civil or military capacity, was omitted,

At its first session, in the Meeting House in Cambridge, the Convention organized, adopted a set of ten rules and orders, elected a committee of thirty to prepare a draft, spent a day in "a general and free conversation" on the Constitution, "which lasted till sunset," and adjourned on September 7.

The committee of thirty met at the "New Court House" in Boston, on the site of the present City Hall. It delegated its duties to a subcommittee consisting of James Bowdoin and the two Adamses; and that committee left the entire task to John Adams. No better selection could have been made. John Adams was in his forty-fifth year, at the height of his powers, and one of the highest authorities on political science in America. Long a student of government, his advice had been sought by the framers of the early constitutions in the southern States. He was highly equipped as a lawyer and a practical politician. As a patriot leader in the provincial government and the Continental Congress, and as a minister to France, his political experience was extensive. It was the task of John Adams to construct a government on the ruins of what his cousin Samuel Adams had done so much to destroy.

The Adams draft, with one or two additions by the larger committee, was ready for the Convention at the beginning of its second session, on October 28, 1779. This entire session was devoted to the Declaration of Rights. Attendance fell off to such an extent that on November 11, when this first part of the Constitution was completed, the Convention adjourned to January 5, 1780. This long recess did not promote better attendance, for in the meantime the hard winter of 1780, the last really "old-fashioned winter," set in. Boston Harbor was frozen up to Nantasket Roads, and the snow lay so deep in the interior that travel was impossible save by snowshoes. Oldest inhabitants could remember nothing like it since 1717, and its equal has not been known since. The result was that the third session, at the Representatives' Chamber in the Old State House, was unable to transact any business until January 27, when sixty members were present, and the attendance never rose above eighty-two. Yet this was the most important session of the Convention. Almost every article of the John Adams draft of the Frame of Government was committed, debated, and

polished into its final form. On March 2 the Convention again adjourned, submitting the result of its labors to the people in a printed pamphlet, together with an address recommending its acceptance.

4. THE RATIFICATION.

The mode of ratification adopted by the Convention was peculiar. Profiting by the experience of 1778, it did not submit the Constitution as a whole to popular vote. Instead, it asked the adult freemen to convene in their town meetings to consider and debate the Constitution clause by clause, to point out objections, if any, to particular articles, and to send in their returns to the secretary of the Convention, with the yeas and nays on every question. The people were then asked to empower the Convention at an adjourned session on June 5 to ratify and declare the Constitution in force if two-thirds of the voters were in favor of it, or, if not, to alter it in accordance with the popular will as expressed in the returns, and ratify it as thus amended. It was now almost four years since the machinery of constitution making had been set in motion.

About 16,000 people out of a total population of 363,000 voted on the Constitution. This was a larger vote than was cast for Governor during the next six years. The town meetings freely accepted the invitation to criticise the Constitution; and their returns are a remarkable testimony to the political wisdom of the plain people of that day. A few objections were grotesque, and certain proposals were reactionary, but many were subsequently adopted as amendments to the Constitution.

On June 5 the Convention convened for its fourth and last session at the old Brattle Street Church in Boston. It had previously invited the towns to replace their delegates by new members if they wished, but only a few did so. A committee was appointed to canvass the returns and report the result to the Convention. This committee adopted a system of tabulation which to-day would be called political jugglery. The towns had not voted on the Constitution as a whole, but article by article; and in many cases they proposed a substitute for an article they objected to, and voted on that instead of on the original. These votes on amended articles were either thrown out or

counted as if cast for the original article. Hence it was made to appear that every article of the Constitution had well over a two-thirds majority, although a fair tabulation would have shown only a bare majority for at least two.¹ Doubtless the Convention felt justified in this rather questionable work by the imperious necessity of obtaining the adoption of the Constitution, for in some parts of the State the cry "No Constitution, No Law," was being raised to excuse men from paying taxes or doing military service. On June 15 the Convention voted that the people have accepted the Constitution "as it stands in the printed form." The next day it provided for the first election of Governor and General Court, and closed "with thanksgiving and prayer." On October 25, 1780, John Hancock was inaugurated the first Governor of the Commonwealth of Massachusetts.

VI.

CONSTITUTIONAL DEVELOPMENT IN THE COMMONWEALTH OF MASSACHUSETTS, 1780-1915.

1. THE CONSTITUTION OF 1780.

John Adams was a conservative, in the best sense of the word. He believed in preserving old institutions (like annual elections) that had proved their worth, in discarding others (like a dependent judiciary) that had not, and creating new ones (like the constitutional convention) to meet new needs. His plan was largely that of the *Essex Result*, which in turn was doubtless influenced by his own writings on government. The materials he chose from the old colonial and provincial structures, from concrete experiences in self-government for a century and a half, and from the constitutions of sister States.

The Preamble, a new feature in constitutions, is Locke and Rousseau epitomized. The Declaration of Rights is derived from the Bills of Rights of other constitutions, from the colonists' own experience with governmental tyranny, and from sources as remote as Magna Carta.² It was more nearly com-

¹ *Proceedings of the Massachusetts Historical Society*, May, 1917.

² Article XI is an expansion of Magna Carta, section 40, and the third sentence of Article XII is almost a literal translation of Magna Carta, section 39.

plete than any of its predecessors. Fourteen of the thirty articles are almost identical with the Pennsylvania Declaration, and many of these were taken from the Virginia Bill of Rights of 1776. Others are found in the early constitutions of Maryland, North Carolina, and Delaware.

Three years later, Article I was held by the Supreme Judicial Court, all the judges of which had been members of the Convention, to abolish slavery in Massachusetts. It is doubtful whether it had been inserted for that purpose. Most of the other articles were designed to protect the civil rights of the citizens. Articles XIV and XXIV, against general warrants and *ex post facto* laws, were suggested by the provincial experience with writs of assistance and parliamentary legislation. Subsequent constitutional conventions may be said to be based on Article VII. In John Adams's original draft, Article XVI protected liberty of speech as well as the press, but the Convention amended it. Article XXIX embodied one of John Adams's profoundest conceptions, — the preservation of impartial justice by a judiciary appointed during good behavior and assured of a fixed salary. The provincial judiciary had been most susceptible to political pressure by being appointed during the King's pleasure, and having its salaries annually granted (or withheld) by the General Court.

Article XXX states the central principle of the theory of separation of powers, — that the three branches of government be exercised by a different set of men. Each branch of the government was "balanced" and "checked" by the other two. The supreme power, the people, checked all three through the Declaration of Rights.

"In studying the relations existing between church and State under the revolutionary constitutions," writes Dr. William C. Webster, "one is impressed with the striking contrast between facts and pretensions."¹ In almost every constitution were resonant and high-sounding clauses concerning the sacredness of religion and liberty, followed by others denying religious liberty to many creeds and sects. Our own was no exception. Article II of the Declaration of Rights guaranteed freedom of con-

¹ *Annals of American Academy of Political and Social Science*, IX, 403.

science, but Article III set up a quasi-religious establishment.¹ It embodied in the fundamental law of the Commonwealth a church and State relationship formerly alterable by the Legislature. [The general principle was that every citizen of the Commonwealth must pay taxes towards the support of the Congregational church of the town, parish, or precinct where he resided and where his property was located. The fourth paragraph allowed non-Congregationalists to pay their religious tax to their own pastor; but the courts construed this clause so narrowly that in practice it exempted only members of an incorporated Episcopalian, Baptist, Methodist, or Universalist church.] A member of one of these bodies who resided too far from a church of his denomination to attend it, or a non-churchgoer, had to help support a Congregational minister, — unless he lived in Boston, where the voluntary system prevailed. The article was distinctly the work of orthodox Calvinist Congregationalists; it was intended (in spite of the fifth paragraph) to favor, and did favor, that sect. But the third paragraph had some unexpected results. Several of the towns and parishes, which thereby were given the exclusive right to elect their “public teachers” (ministers), were converted to Unitarianism, and settled Unitarian pastors over old Calvinist churches. The ratification of Article III was strongly opposed by Baptists and liberals of all shades. During the fifty-three years it was in force it was fruitful in lawsuits, bad feeling, and petty persecution.

The Constitution of Massachusetts was more liberal than many of the period in extending civil rights to Catholics. The oath of office, however, was intended, as the Convention’s address explained, to exclude “those from Offices who will not disclaim these Principles of Spiritual Jurisdiction which Roman Catholics in some countries have held.” Several attempts were made in the Convention to qualify the word “Christian,” wherever it appears in the Constitution, with the word “Protestant,” but without success. John Adams regretted the Convention’s

¹ The system cannot be described in any one word or phrase. It was not an establishment like that of the Church of England in Ireland and South Carolina, because the Legislature had no power to regulate doctrine and force conformity; and because dissenters received a share of the taxes levied for religious purposes. [The Congregational churches were favored rather than established in Massachusetts.]

insertion of the test oath, and Joseph Hawley, the patriot leader of western Massachusetts, refused an election to the State Senate because of it.

Chapter I, Section I, preserves the ancient title of the Legislature, the traditional commencement of the legislative year, and much phraseology of the Colony charter. In obedience to the principle of separation of powers, the legislative powers of the old provincial Council were assigned to a Senate, and its executive powers to a Governor's Council; but the common origin of the two was preserved in their election. By this clumsy method the whole General Court chose nine of the forty "councillors and senators" to be the Council; the remainder constituted the Senate. After political parties were formed it became a regular thing for a Councillor-elect to refuse to leave the Senate, fearing to cut down his party's majority; the vacancy in the Council would then (Chapter II, Section III, Article II) be filled from the people at large. The Governor, unlike the President of the United States, was not allowed to select his own Cabinet or Council, since the latter was created to check any tyrannizing tendencies that might crop out in the person of the chief magistrate. All the States but two had a Council. About thirty years later, John Adams wrote a friend that he was heartily sick of the Governor's Council, and in the Convention of 1820, old as he was, he made a speech in favor of its being elected by the people or abolished altogether.

"The House of Representatives is intended as the Representative of the Persons, and the Senate of the property of the Commonwealth," states the address of the Convention of 1780 to the people. Chapter I, Section II, Articles I and V, adopted the scheme of the *Essex Result* for making the Senate responsive to property interests, — an apportionment of the Senators according to the taxable property of senatorial districts, with a high property qualification for the office. The famous gerrymander of 1812 was a rearrangement of senatorial districts. Power to try impeachments presented by the lower House was also granted to the Senate.

In spite of the fact that the House was supposed to represent the people at large, Chapter I, Section III, Article IV, adopted

a property qualification for voting for Representatives as well as Senators. The qualification was not large and in practice soon became a dead letter; but it was fifty per cent higher than that of the Province charter, and exceeded the requirements in every other State save South Carolina. A number of towns strenuously objected to it as unfair, undemocratic, and a violation of the principle of "no taxation without representation." It is difficult to understand why the manhood electorate that voted on the Constitution of 1780 consented to its own partial disenfranchisement by accepting this article.

The town of Newton, in its return on the Constitution, demanded the extension of the referendum to ordinary legislation. It proposed that upon application of the selectmen of seven towns, any act of the Legislature must be submitted to the town meetings, and might be repealed by a majority of those voting thereon.¹

The distribution and numbers of Representatives in the lower House was an open constitutional question in Massachusetts until Amendment XXI was adopted, in 1857. The problem was a three-cornered one, — to reconcile the desire of the smallest towns to retain their traditional right to one Representative, and the claim of the urban centers to a proportional number, with the necessity of keeping the size of the House within reasonable bounds. John Adams at least satisfied town and country, which is more than can be said of the revisions between 1820 and 1853. But in 1812 the membership of the House exceeded 700, or 1 to every 1,000 people. A similar proportion would give us to-day a representative body 3,700 strong. The quorum for the House was so ridiculously small that it was no larger at times than the membership from Boston alone.

The property qualifications for office were higher than in any contemporary constitutions, except those of New Jersey, South Carolina, and Georgia.

Chapter II, Section I, on the Governor, created the most imposing and independent chief executive in the United States. In only three other States was the Governor elected by the people, and no other State granted him so great a power of appointment, or a share in legislation. John Adams and The-

¹ 277 State Archives, 22.

ophilus Parsons believed in an absolute veto; but the Convention amended John Adams's draft by allowing the Legislature to override the veto by a two-thirds majority. The absence of any constitutional restriction on the Governor's re-election was also unprecedented. Governors Hancock and Strong were both re-elected ten times.

Chapter III, on the judiciary, repeated the principle of fixed tenure and salary already stated in Article XXIX of the Declaration of Rights. The people have frustrated every effort of the politicians to revise this chapter, — only one amendment (XXXVII), and that of an interpretative character, ever having been ratified.

In Chapter III, Article I, it was provided that the judges may be removed at any time by the Governor, with the consent of the Council, on the address of both houses of the Legislature. This power of removal has been sparingly exercised, and only once — the anti-slavery case of Judge Edward G. Loring — abused.

Chapter V, Section I, ^{fin}described the rights and privileges of Harvard College. Section II, on "the encouragement of literature, etc.," was John Adams's favorite section. He wished Massachusetts to emulate foreign governments in the promotion of scientific research and scholarship. He was particularly anxious lest the "natural history" and "good humor" clauses be deleted by the Convention. The section indicates a much broader conception of governmental action than was common in the individualistic America of that day.

Chapter VI, Article X, providing for the possible holding of a constitutional convention in 1795, secured a more narrow popular majority than any other article of the Constitution. There was a general feeling of its inadequacy.

The decennial valuation provided for in Chapter I, Section I, Article III, was a unique feature of the Massachusetts Convention.

Although faulty in many of its details, the Constitution of 1780 was the most successful and enduring State constitution of the Revolutionary period. The separation of powers was carried out more boldly and logically than ever before, and the drafting was greatly superior to the standard of the day. It has

been possible in the last one hundred and thirty-six years to change outgrown details while retaining the framework almost unimpaired. No other American constitution has had as long a life; no other written constitution now in force dates back so far.

The Constitution went into effect on October 25, 1780, when John Hancock was inaugurated the first Governor of the Commonwealth. At the foot of his proclamations appeared for the first time the now familiar formula, "God save the Commonwealth of Massachusetts."

2. THE CONSTITUTIONAL CONVENTION OF 1820.

The vote on the question of calling a constitutional convention in 1795 was the heaviest in proportion to the electorate ever cast in Massachusetts on a constitutional question, being greater than the total vote for Governor the same year. A bare majority was in favor of revision, but as Chapter VI, Article X, required a two-thirds majority, no convention was held. No other method of amendment was provided, hence a new convention was necessary for constitutional development. The right of the people to call one whenever the majority wished might be inferred from Article VII of the Declaration of Rights, as well as the precedent of 1779, and the general practice of American States.

The direct occasion for holding the Convention of 1820 was the separation of Maine from Massachusetts. Governor Brooks, after alluding to this matter in his message of January 13, 1820, inquired whether general "considerations affecting the interests of the people, as connected with the future operations of the government, will not, at the present time, call for at least, a partial revision of the Constitution?"

"The indefeasible right of the people 'to institute government,' and 'to reform, alter, and change the same, when their protection, safety, prosperity, and happiness require it,' is distinctly asserted in the bill of rights. But the Constitution contains no provision for a revision after the year 1795. Yet as the legislative power extends to every object that involves the good and well-being of the Commonwealth, which is not specifically excepted, we may infer the right and duty of the Legis-

lature, to submit to the consideration of the people either the general question of revision, or such propositions for particular amendments, as they shall judge to be most promotive of the public good.

"The subject, gentlemen, is constitutionally in your hands."

The General Court took no action at its winter session, possibly because it was not certain until March 3, when the Maine-Missouri bill passed Congress, that the separation would really take place. On March 15, after the Legislature of 1819-1820 had adjourned, Maine left us. The consequence was that only thirty-one Senators from ten districts, instead of forty Senators from thirteen districts, assembled at the State House on the last Wednesday in May, 1820. Certain newspaper critics deemed this a breach of the Constitution, reparable only by the speedy summons of a constitutional convention without wasting time over a popular referendum. A Senate committee appointed to consider the question reported on June 10 that in its opinion no constitutional action was necessary. Since, however, "a very general expectation exists among the people in every quarter of the State that the occasion would be taken, and was favorable for the revision of the Constitution," they begged leave to report a bill for taking the sense of the people on that subject. This bill, with an original requirement for a two-thirds majority, amended to a bare majority, became a law on June 16.

It was much more elaborate an enabling act than the resolve of February 19, 1779, and provided that in case the people chose to have a convention each town could elect as many delegates as it was entitled to send Representatives to the General Court. No one was allowed to vote for delegates unless qualified to vote for Representatives. The Convention of 1820, unlike its predecessors, did not rest on universal suffrage; but it was granted full power to determine the mode and manner of submitting its work to the people, with a blank check on the treasury for pay and expenses.

On August 21 the people decided, by a vote of 11,756 to 6,593, to hold a convention. Hampshire and Franklin counties and about seventy towns throughout the State voted against it, but several of these towns sent delegates who took a leading and constructive part in the debates. The election of delegates took

place on October 16, and the Convention assembled in the old Representatives' Chamber of the State House on November 15. It was the largest of our constitutional conventions, the total membership being four hundred and eighty-five.¹

The period was unusually favorable for a constitutional convention. It was the "era of good feeling" in national politics, and President Monroe was that year almost unanimously re-elected. Political rivalry was still keen between the local Federalism and Democracy, but the bitter partisanship of the War of 1812 was over, and Fusion tickets for delegates were supported in several towns. Among those elected were the venerable John Adams and one other member of the last Convention; Chief Justice Parker; Judge Story of the Supreme Court of the United States; Lemuel Shaw, the future Chief Justice, and many experienced lawyers and politicians of both parties, such as Daniel Webster, Josiah Quincy, Joseph B. Varnam, William Sullivan, James T. Austin, George Bliss, future Governor Levi Lincoln, and General Henry A. S. Dearborn. After John Adams had declined the presidency of the Convention on account of his great age, Chief Justice Parker was elected by a majority of one, his nearest competitor being Judge Story. Party feeling was evident in this contest. Judge Parker, an ardent Federalist, had delivered so many political lectures on what the Convention ought not to do, in his charges to the grand juries during the fall term, that a sarcastic contributor to the *Boston Patriot* urged the Convention to delegate its powers to the Supreme Court and adjourn forthwith. Judge Story had Democratic antecedents. But no party feeling is evident in the debates. It was Samuel Dana of Groton, a leader of the old radical Democracy of Jefferson's time, who struck the keynote of this Convention on its opening day by saying "that the Constitution should be approached with great reverence, and that we should proceed with great caution." As President Parker afterwards admitted in a letter to Senator Otis, "the whole talent of the Democratic party was arrayed on the side of sound principle and good order." That the Federalist delegates presented a solid phalanx on the conservative side goes without saying.

¹ Not including five delegates elected who did not take their seats.

Judge Story wrote of the Convention:—

There was a pretty strong body of Radicals, who seemed well disposed to get rid of all the great and fundamental barriers of the Constitution. Another class still more efficient and by no means small in number, was that of the lovers of the people, *alias* the lovers of popularity. . . . But after all these deductions, there was a strong body of sound, reflective, intelligent men, who listened and were convinced, and marched onward with a steady eye to the public good. On the whole, I never knew so great a number of men, who seemed to be so deliberative, upon whom argument produced so powerful and wholesome an effect, and who could be so completely taken away from their own obstinate prejudices.¹

On November 16 the Convention adopted a set of forty-five rules and orders, and soon after voted itself the moderate compensation of \$2 per diem and two daily newspapers for each member, the latter being a common legislative perquisite in the nineteenth century. The method of procedure was then determined upon. All those parts of the Constitution of which there was any question of revision were divided among ten committees, appointed by the president, instructed to report to the Convention what amendments, if any, to those parts should in their opinion be adopted. Most of November 20 and 21 was passed in debating contested elections of delegates. As early as the 22d the committees began to report, and the rest of the Convention, up to and including its last session, on January 3, 1821, was spent in debating and amending its reports in committee of the whole.

Three different methods of submitting the Convention's work were discussed: (1) to incorporate all the amendments decided upon into the fundamental law, and submit this substantially new Constitution to the voters for acceptance or rejection; (2) to submit all the amendments in a lump; (3) to divide the alterations recommended by the Convention into a number of separate propositions, the popular acceptance of any one of which would be compatible with the rejection of all the rest, the accepted propositions to become amendments to the Constitution of 1780. The Convention of 1853 attempted a combination of the first and third methods, and fell between two stools. The Convention of 1820 adopted the third method,

¹ *Life and Letters of Joseph Story*, I, 394.

although Josiah Quincy said it would be impossible for the people "to examine and discuss intelligently such a number of propositions."

The proposed amendments, accompanied by an address, were submitted for ratification to the qualified voters (not to universal suffrage, as in 1780) in fourteen propositions, to be voted upon April 9, 1821. A committee of the Convention was appointed to meet at the State House on May 24, count the votes, and declare such propositions as secured a majority to be ratified and accepted as amendments to the Constitution. The total vote for and against each article was to be certified by the committee to the Governor and the General Court, and those articles ratified were to be "promulgated and made known to the people in such manner as the General Court shall order."

The work of this Convention may be most conveniently grouped under the fourteen propositions it submitted.

The first was an amendment to the Declaration of Rights, Articles III and XII. It was not ratified. Much discussion was provoked by the proposed alteration of Article III, on the relations of church and State. It was a conservative amendment, simply deleting the second paragraph, on forced attendance at public worship; making clear and definite the principle of the fourth paragraph (which had been impaired by judicial decision), that every one had a right to pay his religious taxes to a pastor of his own denomination; and extending this right to Catholics. The connection of church and state, compulsory taxation for religious worship, and the advantageous position of the Congregational churches were unimpaired.

This very mild amendment did not go far enough for the more liberal (or perhaps Judge Story would have called it radical) section of the Convention. Old John Adams, to his eternal credit, proposed that "all men of all religions" be substituted in the fifth paragraph of Article III for "men of every denomination of Christians," as having the equal protection of the law. Childs of Pittsfield proposed an amendment similar to the Eleventh Amendment, adopted in 1833, withdrawing State support from the churches. Awful consequences to religion, morality, and to the State were predicted if the Childs amendment should be adopted, all ignoring the fact that Boston had had

the modern voluntary system since the coming of the Puritans. Leverett Saltonstall of Salem deemed voluntary support a "fearful experiment. . . . Our temples of worship will decay and fall around us. Those beautiful spires that now ornament our towns and villages will fall to the ground." Besides, depriving Congregational parishes of the right to tax all non-churchgoers and non-resident property-owners within their limits will impair a vested interest. "Corporate rights and privileges are sacred things. . . . I stand as in the presence of our ancestors; they conjure us not to destroy what they planted with so much care. . . . Let us not in one hour destroy the venerable work of two centuries! Above all, on this day, the anniversary of the landing of the Pilgrims," etc. Daniel Webster supported him, and the Childs amendment was twice rejected. But its adoption by the Convention would have served no purpose, for Proposition No. 1 as it stood was too radical for the people. It was rejected by a vote of 11,065 to 19,547, — Suffolk and Middlesex, Barnstable and the Island counties alone voting in favor.

Proposition No. 2, which was also rejected, provided that all State elections be held on the same date, the second Monday in November, instead of at different dates in April and May; and that the political year should commence the first Wednesday in January, instead of the last Wednesday in May. This would have the advantage of eliminating one session of the Legislature, for at the spring session hitherto the General Court had done little more than organize, elect the Council, etc., and then disperse in time to get in the hay. But the last week in May, "election week" or "anniversary week," had long been the gala season of Massachusetts, when religious and charitable associations held their annual conventions at the capital. This holy week of Protestants, as Dr. Holmes called it, was marked by many festivities of a jovial nature, culminating with Artillery election on Boston Common. In the Convention Daniel Webster defended the spring elections because they tended to keep State and national politics distinct. Josiah Quincy opposed any change "in a great institution established by our ancestors, at the first settlement of our country." In January "a snow storm, of the ancient violence and depth," might change the

whole political power of the State. And would the learned and religious societies change their annual convention to January? "As well take the warm and glowing sun of May from the sign in which he predominates at that season, and place him in the sign which rules the inverted year; as well take the flowers and green surface of June, and spread them as a carpet in January, as transfer the institution of the former period to those of the latter. It could not be done. Nature is against it." And the people apparently agreed with Mr. Quincy, for they rejected Proposition No. 2 by a vote of 14,164 to 16,728, in spite of a favorable vote from all the counties west of Worcester, and south and east of Plymouth. Yet only ten years later, in 1831, the people ratified Amendment X to the Constitution, almost identical with the second proposition of 1820, by a vote of three to one.

The third proposition, clearing up a doubtful point on the exercise of the Governor's veto, was adopted, and became the first amendment to the Constitution. Proposition No. 4, adopted as Amendment II by a vote of 14,368 to 14,306, empowered the General Court to grant city charters to towns of 12,000 inhabitants and over. Attachment of the people at large to the township system caused the narrow majority of 62 votes; only an overwhelming vote in Boston, whose 43,300 inhabitants had outgrown government by selectmen and town meetings, secured the adoption of this proposition.

Proposition No. 5 dealt with the thorny subject of the size of the General Court and apportionment of representation. It was practically identical with Amendment XIII, ratified in 1840, adopting a minimum unit and mean increasing number for representation, almost tenfold that of the original Constitution. In addition it proposed to make the counties senatorial districts, to prevent gerrymandering, and to adopt the old alternative for electing the Council (by the General Court, from the people at large) as the only method. It was in the debate on this clause that John Adams rose to suggest that the Council be elected by the people (as it has been since 1855), or abolished altogether.

Levi Lincoln proposed to apportion the Senators according to population (as also accomplished in Amendment XIII), not

wealth. "Property is incompetent to sustain a free government," he said. "Intelligence alone can uphold any free government." It was said that Suffolk County in 1820 had one Senator for every 7,500 inhabitants; Berkshire, one for every 20,000. This system was defended by John Adams as the only method to "render property secure," which he insisted was the "great object" of government, and by Judge Story in one of the longest and greatest speeches of the Convention. As it was, the people rejected Proposition No. 5 by a vote of two to one, and there is no reason to suppose that the Lincoln amendment would have rendered it more palatable.

Proposition No. 6, which became Amendment III to the Constitution, provided that all tax-paying citizens could vote for elective officers. It was first proposed, by John Keyes of Concord, to adopt universal male suffrage. His colleague Samuel Hoar strenuously opposed this, on the ground that the old property qualification stimulated young men to be sober and industrious. Universal suffrage "went directly to sap the foundations of society." Josiah Quincy made the more valid objection that Massachusetts was destined to become a manufacturing State, when the votes of the proletariat would be delivered by their employer. Thirty years later the secret ballot law was passed to remedy this abuse.

The Keyes resolution was defeated, 185 to 157, but reconsidered by a vote of 201 to 200, Daniel Webster, as chairman of the committee of the whole, giving his casting vote in the affirmative. George Blake of Boston then introduced the tax-paying qualification as an amendment, which was adopted; and Proposition No. 6 was ratified as Amendment III by a vote of 18,702 to 10,150, Bristol and Hampden counties alone opposing. This apparent extension of the franchise really made very little difference, as the old property qualification had long been a dead letter. The vote for Governor in 1822, the first year that Amendment III was in force, was smaller than for some years preceding.

Proposition No. 7, which was accepted by a small majority as Amendment IV to the Constitution, somewhat increased the appointing power of the Governor and Council at the expense of the General Court. The most popular of the Convention's

propositions was No. 8 (Amendment V), extending the right to vote for captains and "subalterns" of the militia to all members of their respective companies.

Proposition No. 9, on the judiciary, was the product of some of the master minds of the Convention; but was rejected by the people and never subsequently adopted. The report of the judiciary committee, signed by Judge Story, recommended that the "recall" provision in Chapter III be emasculated by requiring a vote of two-thirds of both Houses for the joint address recommending removal.

In the debates, Lemuel Shaw and Daniel Webster defended this limitation on the ground that the judiciary could never be independent while subject to removal by a legislative majority.¹ Levi Lincoln "was entirely satisfied with the Constitution as it was. He had never heard till now, and was now surprised to hear, that there was any want of independence in the judiciary." A compromise was finally agreed upon to the effect that no joint address for removal of a judge should be passed without cause shown and opportunity given to be heard in his defence. James T. Austin, the future Attorney-General, opposed even this change. "While we secure the independence of the judges, we should remember that they are but men, and sometimes mere partisans. He had heard of men being elevated to high judicial stations, not because they were the most able and the most learned, but because they stood in the front ranks of their party." The Story committee also recommended that the Legislature be empowered to establish a supreme court of equity. The Convention negatived this, but incorporated with Proposition No. 9 a provision for the removal of justices of the peace, in the same way as judges; and the elimination from the Constitution of Chapter III, Article II, on the giving of advisory opinions by the justices of the Supreme Judicial Court.² The people rejected Proposition No. 9 by a vote of 12,471 to 14,518.

The Tenth Proposition referred to Harvard University, and was also rejected. Chapter V of the Constitution was originally

¹ It was not claimed that the Legislature had abused the power of recall. Only three judges had been recalled before 1820, — a justice of the Supreme Judicial Court for disability, and two judges of the Court of Common Pleas for extortion in office.

² Four reasons for this are given in the address of the Convention.

referred to a committee of which Josiah Quincy, the future president of the University, was chairman. He reported no alteration expedient, and argued that the college charter of 1642 was inviolable, even by constitutional amendment. This did not satisfy the Convention, which appointed a committee of five to inquire into and report upon the constitutional rights and privileges of the college, and the state of the donations made it by the Commonwealth. The report of this committee, signed by Daniel Webster, gave a brief account of the college funds and donations, which turned out to be unexpectedly small, and confirmed the statement of Josiah Quincy regarding the sanctity of the charter. Having asked and obtained the requisite consent from the college corporation and board of overseers, the committee recommended that Article V of the State Constitution be amended by opening the clerical places on the board (then confined to ministers of Congregational churches) to ministers of every denomination of Christians. This was accordingly adopted as Proposition No. 10, which the people rejected by an unaccountably heavy vote, Suffolk County alone being in favor.

The Eleventh and Twelfth Propositions, adopted as Amendments VI and VII, substituted a single oath of allegiance to the Commonwealth of Massachusetts for the complicated politico-religious oaths of office in Chapter VI, Article I. Like other questions involving religion, this one caused considerable discussion on both sides, several members being in favor of retaining the old tests. "We have agreed," states the Convention's address, "that the declaration of belief in the Christian religion ought not to be required in the future; because we do not think the assuming of civil office a suitable occasion for so declaring; and because it is implied, that every man who is accepted for office, in this community, must have such sentiments of religious duty as relate to his fitness for the place to which he is called."

The Thirteenth Proposition, ratified as Amendment VIII to the Constitution, prohibited certain pluralities overlooked in 1780, as well as the holding of certain Federal and State offices by the same person.

The Fourteenth Proposition, adopted in Amendment IX, provided the regular system of amending the Constitution

which is still in force. It differed from the original form in Daniel Webster's committee report in that the latter required the assent of "two-thirds of the members of both houses" to propose an amendment, and a "majority of the qualified voters" to ratify it. This last requirement was struck out, for it would have made the amendment of the Constitution practically impossible. Webster also consented to substitute a "majority of the senators and two-thirds of the house of representatives present and voting thereon" for the first part, Quincy and Austin opposing, Lincoln and Varnum supporting the chairman.

After the returns had been duly corrected and certified by the Convention's committee, Governor Brooks, on June 5, 1821, declared the first nine amendments to the Constitution adopted. The Convention of 1820, then, was a success. Nine of its fourteen propositions were immediately adopted, and three others were substantially adopted within the next twenty years. Furthermore, the door for all future amendments was opened by Amendment IX. But the ostensible reason for summoning the Convention, the difficulty over the Senate, following the separation of Maine, was almost overlooked by the Convention itself, and finally incorporated in a proposition that the people refused to accept.

3. PERIOD 1821-1850.

The first two amendments to the Constitution adopted under Article IX were of the highest importance. Amendment X (1831) was the same as Proposition No. 2 of the Convention of 1820. It altered the beginning of the political year from the traditional last Wednesday in May to the first Wednesday in January, where it still remains, and placed all the State elections for the first time on the same date, the second Monday in November. Amendment XI, adopted in 1833, withdrew State support from the churches. It permitted religious societies to tax their own members (a right finally withdrawn by Chapter 419, Laws of 1887), but defined members in such a way that an equality of sects was established, and church separated from State. All the unwilling members of the old Congregational parishes were now permitted to withdraw their membership at will, and not required to join any other parish. "And no

person shall hereafter be made . . . a member of any parish or religious society, so as to be liable to be taxed therein for the support of public worship . . . without his express consent for that purpose first had and obtained.”¹

In the meantime the old system of representation was becoming more and more unsatisfactory, leading to an abortive movement for a constitutional convention that merely complicated matters, and finally to the Convention of 1853.

The size of the House of Representatives ebbed from its high mark in 1812, when the act paying members' salaries out of the State treasury was repealed. During the next decade it fluctuated between 160 and 398. As long as the expense of membership fell on the towns, they exercised their franchise sparingly and irregularly. When the public treasury again undertook the burden, the size of the House again passed 600, the session lengthened out, and annual expenses increased fivefold.

This condition of affairs became almost an annual subject of unfavorable comment in the Governor's message, and of agitation in the press and the General Court. If a remedial amendment passed the Legislature, it stimulated the small towns to send enough members to the next Legislature to prevent its getting before the people. A new constitutional convention seemed the only remedy.

On January 10, 1833, the House ordered a committee to consider the propriety of taking the sense of the people on holding a convention to amend that part of the Constitution relating to representation. A week later Robert Rantoul, chairman of the committee, reported in favor of it. He was strongly of the opinion that the House could never be persuaded to adopt a reform that would cost some of its members their places. And if a constitutional convention is authorized “it will be inexpedient to attempt to impose any restriction upon its deliberations. The whole Constitution must pass under revision. . . . The present time is exceedingly favorable to a calm consideration of this important subject, and that further delay may bring us to a period of strong party feeling, and of great political excitement . . . when amendments of the Constitution will be

¹ Partly quoted from the act of April 1, 1834, which was passed to carry out the purpose of Amendment XI. The vote on this amendment was 32,234 to 3,372, the largest relative majority for any constitutional amendment ever ratified in

attempted under less favorable circumstances than at present." A bill similar to that of 1820 was submitted with the report.¹

In the meantime the House had requested the justices of the Supreme Judicial Court to give their opinions on two questions: First, whether an act of the Legislature which should provide for taking the sense of the people on holding a convention for revising some specified part of the Constitution could restrain such convention from proposing amendments to other parts of the Constitution? Second, can any specific amendment to the Constitution be made in any other manner than that prescribed in Amendment X? Chief Justice Shaw and Justices Putnam, Wilde, and Morton replied on January 24, 1833, that under the Constitution the second question must be answered in the negative. As to the first, a constitutional convention, being extra-constitutional, would derive all its power from the popular vote, and be bound by its terms.² The justices, it will be noted, expressed no opinion on the question whether a convention might be called for a general revision, as the committee proposed.³ After the opinion was delivered, the bill in question passed a second and a third reading, but was then indefinitely postponed.

The convention question came up again in 1834. A bill was proposed that year, in defiance of the opinion of the justices, proposing to limit the competency of the convention on whose summons the sense of the people was asked to amending the articles of the Constitution on representation.⁴ This bill was indefinitely postponed on March 13, by a vote of 183 to 128, and the convention movement slumbered fifteen years.

The reform of the representative system by a single amendment was again attempted. The Legislatures of 1835-1836 passed Amendment XII, which was ratified the same year, — the first reform in representation since 1780. The old unit of representation and mean increasing number were doubled. Towns having less than 300 ratable polls could either elect a

¹ House Document No. 11, 1833.

² 6 Cushing, 573, House Document No. 17, 1833.

³ The Rhode Island opinion of 1833 (14 R. I. 649) is the unique authority for the view that a convention cannot be called without special provision in the Constitution for it, a view contrary to the general practice of the States. Over thirty constitutional conventions have met in the United States without any authority in the constitution for their assembling.

⁴ House Document No. 67, 1834; House Journal for 1834, 433.

representative at stated intervals (see Paragraph 2 of the amendment), or combine with other towns to form a representative district, — an opening wedge for the ~~direct~~ system. d

But Amendment XII did not reduce the membership of the House below 500, and hence led to Amendment XIII in 1840, which substituted inhabitants for ratable polls as a basis of representation, and made other changes in the system which satisfied nobody. The existing senatorial districts were made permanent, and Senators were assigned to them according to the number of inhabitants. The old property apportionment, which John Adams and Theophilus Parsons considered a necessary balance in a republic, was abolished. Amendment XIII also adopted the system of electing the Council recommended by the Convention of 1820, and abolished property qualifications for Councillors, Representatives, and Senators.

4. THE CONSTITUTIONAL CONVENTION OF 1853.

(a) *Origin, 1850-1853.*

The Constitutional Convention of 1853 arose mainly out of dissatisfaction with the system of representation, and was promoted by a new dispensation in State politics. At the election of 1850 the Democratic party and the Free-Soil party, or "Conscience Whigs," formed a working agreement known as the "Coalition," which prevented the Whig candidate for Governor from polling a majority, secured control of the Legislature, elected the Democratic candidate (George S. Boutwell) Governor, and sent a Free-Soiler (Charles Sumner) to the United States Senate. The strength of the Coalition lay in the interior of the State, which was becoming somewhat apprehensive of the growth of the manufacturing towns, and their consequent growth of representation under Amendment XIII. Another source of dissatisfaction was the fact that the larger counties and cities, as well as the smaller counties and towns, elected their Senators and Representatives on a general ticket. Middlesex County and Boston, both strong Whig units, could be depended upon to elect six Whig Senators and forty-five Whig Representatives every year. ✓

Governor Boutwell called attention to these "inequalities" of representation in his inaugural message of January, 1851

Before the month was over a joint committee was appointed to report a "more equal and just system of representation." On March 26, 1851, this committee reported a draft amendment which lowered the minimum population entitling a town to one Representative annually, and enlarged the "mean increasing number." Obviously this favored the small towns at the expense of the larger ones. The *Boston Daily Advertiser* computed that it would give 119 Representatives to 139 towns with about 140,000 inhabitants and the same number to 40 towns and cities with about 500,000 inhabitants. The amendment did not secure the necessary two-thirds majority in the House. Immediately after its failure, a bill was introduced into the Senate for taking the sense of the people on calling a constitutional convention. Like ordinary bills, this required only a bare majority of both Houses to become a law. The Whig press proclaimed it a case of *post hoc propter hoc*; the Coalition press insisted that a change in representation was only one of many desirable constitutional reforms.

The constitutional convention bill became a law on May 24, 1851, and was voted on at the regular State election on November 10. The result was 60,972 in favor, 65,846 opposed. Plymouth, Worcester, and Franklin counties were the only ones to cast a favorable vote. But, acting on the advice of Governor Boutwell, the proposition was renewed in the next Legislature. A joint special committee, which included two leading Coalitionists, Whiting Griswold and Anson Burlingame, made a long report in favor of a constitutional convention, with a new bill to that effect. The committee undertook to "point out only those parts of the Constitution, where palpable defects exist." It demanded the usual changes in the representative system; the election of more officials by the people; a limitation of legislative sessions to one hundred days; the prohibition of special acts of incorporation; "the plurality system in more of our elections;" abolition of "the present cumbersome, formal mode of organizing" the government; popular election of justices of the peace, and limitation of their term and jurisdiction; State elections on the same date as national elections; and a reservation of certain sources of income for a school fund. It believed no change in the judiciary necessary, that branch of the government having been entirely satisfactory.

The committee urged a constitutional convention as the only

proper means to secure so general a revision as seemed to them necessary. "We can think of nothing more rash or dangerous, than for the Legislature, in connection with the hundreds of other subjects which press upon its attention, to enter at the same time upon a general revision of the Constitution." Many citizens, eminently qualified for a constitutional convention, such as judges, professors, men of affairs, are either legally or practically ineligible to the Legislature. Then follows a long argument in favor of the constitutionality of a constitutional convention, notwithstanding other provisions for amendment in the Constitution.¹

The bill reported by this committee became law on May 7, 1852. It provided for taking the sense of the people, at the State election in November, on holding a convention. In the meantime there was published a legislative report, signed by Amasa Walker of North Brookfield, of a nature to alarm the small towns. It gave the representation in the House by towns, under the censuses of 1840 and 1850, and predicted what it would be under the censuses of 1860 and 1870. Franklin County had nine towns entitled to elect a Representative annually between 1840 and 1850. It was predicted that the number would fall to two by 1870. Similar decreases were predicted in all the rural counties. This report was reprinted and widely circulated in a pamphlet, which was probably responsible for a favorable vote on that question in the November election of 1852. The total vote fell short of that of 1851, but there was a notable shift to the favorable side in the rural counties. The result was 66,416 yeas, 59,112 nays.

At the same election a Whig administration, hostile to the convention, was chosen. Governor Clifford, in his inaugural address of January, 1853, after alluding to the great increase of expense caused by the Coalition Legislatures of the last two years, remarked:—

Impressed as I am with the conviction that the law passed at the last session, providing for the calling of such convention, is at least of doubtful constitutionality,—that all the amendments that are really desirable could be made in the manner prescribed for its own amendment in the Constitution itself, . . . I cannot refrain from expressing a regret,

¹ Report of the joint special committee of the Legislature of 1852 in favor of a convention to revise the Constitution.

that for such an object an additional burden should at this moment have been cast upon the treasury.

Acting upon this hint, and urged to it by the Whig press, the Legislature made some preliminary motions toward repealing the act of May 7, 1852, thus preventing the calling of a convention. But in the end nothing was done, and the election of delegates took place according to law on March 7, 1853.

According to the act of May 7, 1852, every town and city was allowed to send as many delegates to the Convention as it had a right to elect Representatives the last valuation year. This meant that the smallest town could send at least one, and all but five or six did so. The Convention of 1853, like its predecessor, was empowered to draw upon the State treasury for whatever pay and expenses it chose to establish, and to determine its own mode of submitting and ratifying its work.

(b) *Character, Organization, Procedure, and Method of Submission.*

The Convention of 1853 began and ended in politics. The Whig party opposed the calling of it, both in 1851 and 1852, and opposed the ratification of its work. The coalition of Democratic and Free-Soil parties was in favor of calling it and of ratifying the proposed Constitution of 1853.¹

¹ The following returns, from the *Boston Daily Advertiser*, indicate the close correspondence between the vote on the constitutional question in the elections of 1851, 1852, and 1853, and the vote for Governor the same date. The vote of 1853 is on the draft constitution submitted by the Convention. The returns differ slightly from the official ones in the State archives.

		CONSTITUTIONAL QUESTION.		VOTE FOR GOVERNOR AT SAME ELECTION.	
		Yea.	Nay.	Free-Soil and Democratic Tickets.	Whig Ticket.
1851	Boston,	8,813	7,135	4,926	7,388
	Worcester County,	11,082	7,537	13,307	7,900
1852	Boston,	3,418	6,372	4,321	7,635
	Worcester County,	9,646	5,586	13,069	7,067
1853	Boston,	3,228	9,023	3,858	7,730
	Worcester County,	12,520	7,456	13,589	7,389

Both parties nominated slates in most parts of the State, and a "Democratic Constitutional Platform" was published in the *Boston Post*. Four hundred and twenty-two delegates in all were elected,¹ and of these the Coalition secured a comfortable majority. Nathaniel P. Banks, then a prominent Free-Soil leader, was elected president of the Convention, having 250 votes to 137 for the Whig candidate, Ex-Governor George W. Briggs. As there was no residence requirement for delegates, several prominent politicians who feared defeat in their home towns, especially the Democratic and Coalition leaders of Whig Boston, received election elsewhere. Charles Sumner was elected by Marshfield, and Benjamin F. Hallett, a leader of the old "hunker" Democracy, by Wilbraham; Richard H. Dana, Jr., and Anson Burlingame, both Free-Soilers of Cambridge, by Manchester and Northborough. Whiting Griswold of Greenfield, the chief promoter of the Convention, was sent by Erving in the same county. Henry Wilson, the "Natick cobbler," took the precaution to run both in his home town and Berlin. He was elected in both, but resigned the Berlin seat, which was then tendered to ex-Governor Boutwell, who had been defeated in his own residence, Groton.

The Convention assembled at the old Representatives' Chamber in the State House on May 4, 1853. About two weeks were spent in organizing, contesting disputed elections, deciding on rules of procedure, voting salaries and perquisites,² and discussing the "form of notice to the Town of Berlin." Every step was stoutly contested. It was the golden age of American oratory, and several members of the Convention appeared to be laboring under the delusion that the mantle of Daniel Webster had fallen upon them. Yet the Convention of 1853 undoubtedly contained the most brilliant assemblage of orators the State has ever seen, and several statesmen as well. Beside those above mentioned, there were present on the Coalition side Benjamin F. Butler, one of the most picturesque characters in our history; Francis W. Bird of Walpole, later an organizer of the Republican

¹ This was 16 short of the total number that might have been elected. Only 419 delegates eventually took their seats.

² The Convention incurred much criticism by voting itself \$3 per day per member, which was fifty per cent higher than the salaries of the last Convention or of the House of Representatives. The total expense of the Convention was \$117,000.

party; Ex-Governor Marcus Morton of Taunton, and his son Marcus Morton, Jr., the future Chief Justice; and Robert Rantoul, a member of the Convention of 1820.

On the Whig, or Conservative side, Boston sent a solid delegation, including Rufus Choate, who increased his already great reputation for public speaking; George S. Hillard, of the flowery school of oratory; William Schouler, later Adjutant-General, and Nathan Hale, the editor of the *Advertiser*. Cambridge sent the only two professors in the Convention, Joel Parker and Simon Greenleaf, of the Harvard Law School, but Dana notes in his journal that they "had less influence than the two mercantile members from the same town." Otis P. Lord of Salem was another influential Conservative. It cannot be said that this Convention represented the intelligence of the Commonwealth as well as its predecessors. In 1853 Massachusetts was leading the progressive thought of the nation with such men as Garrison, Phillips, Whittier, Emerson, Horace Mann, and Samuel G. Howe; but this group had few points of contact with politics, and its sole representative in the Convention was the Rev. William B. Greene of Brookfield, transcendentalist, mathematician, and soldier, who shocked his colleagues with a speech in favor of woman suffrage.

Nor can it be said that the Convention adequately represented the classes in the community. Massachusetts was already a manufacturing State; but the rapidly increasing laboring class had not yet developed leaders of its own. Out of a population just short of a million, there were about 200,000 foreign born in the State, the greater part of whom were Irish. Only seven members of the Convention were foreign born, and Robert T. Davis of Fall River was the solitary Irishman present. In all there were 35 artisans, 42 manufacturers, 65 merchants and traders, 73 lawyers, and 128 farmers. The Convention contained more self-made men, like Banks, Butler, and Wilson, than its predecessor; but on the whole it represented the same mercantile, maritime, and farming Bay State of Revolutionary stock and strong native traditions — the old order that was passing.

In its procedure the Convention followed its predecessor. The Constitution was divided into fifteen sections, each of which was

referred to a standing committee appointed by the Chair, with instructions to report in printed form whatever alteration, if any, it proposed to make therein.¹ The reports were subsequently discussed in committee of the whole, amendments being offered from the floor, and often by a minority of the committee. The thirty-five changes adopted in the Constitution were embodied in a series of brief orders or resolves, which were referred to a committee of thirteen, George S. Boutwell, chairman, with instructions "to reduce the amendments of the Constitution to the form in which it will be proper to submit the same to the people for ratification."²

It was this committee that devised the unfortunate method of submitting this Convention's work. Most, but not all, of the thirty-five changes were embodied in the Constitution of 1780, together with the thirteen amendments already adopted, the whole making a new Constitution to submit to the voters. Seven proposed changes were not incorporated in the new Constitution, but submitted as separate amendments.

Following the precedent of 1779, the drafting of the new Constitution was delegated to a subcommittee of three, consisting of Professor Parker, Boutwell, and Dana, the last two performing the work. Their problem was to eliminate from the Constitution of 1780 all that had already been annulled by the thirteen amendments, and all that would be annulled by the thirty-five new changes. They must also clothe the thirty-five changes in constitutional language, the Convention having merely adopted bare principles. This complicated and exacting task was completed by Dana and Boutwell at 10.30 p.m., Sunday, July 31, after a twelve-hour session at the latter's room at the Adams House.³

During the Convention there was an interesting debate on the electorate to which its work should be submitted. The act of May 7, 1852, said that it "shall be submitted to the people for their ratification and adoption, in such manner as the said Convention shall direct."⁴ Early in the sessions, William B.

¹ *Debates*, I, 11, 88. All references to the *Debates of the Convention of 1853* in this article are to the three-volume edition. The rules and orders are in *Debates*, I, 60-64, and in a separate manual.

² *Journal of the Convention*, 138, 143.

³ *Debates*, III, 655; Adams' *Dana*, I, 243-249.

⁴ *Debates*, III, 732.

Greene presented a petition of Mrs. Abby B. Alcott (wife of the Concord philosopher) and 73 other women to the effect that, being "people," they might be permitted to vote on the new constitution.¹ There followed an interesting debate on "Who are People?" on woman suffrage, and on the advisability and constitutionality of submitting the new constitution to a wider electorate than already existed. No one seems to have brought up the excellent precedent for such action in the submission of the Constitutions of 1778 and 1780 to adult male suffrage at a time when a property qualification was required for voting.

(c) *Debates, Rejected Constitution of 1853, and Additional Propositions.*

It will be most convenient to describe the work of the Convention of 1853 by taking up in order what was new in the draft Constitution which it submitted to the legal voters.

Little change was made in the Declaration of Rights beyond altering Article XXIX to conform to the new judicial tenure. Richard H. Dana, a member of the committee on the Declaration, wrote in his diary:—

In our committee (Bill of Rights) we resolved not to attempt to rewrite the instrument, and only to make necessary changes. We discussed the principle of the "Social Compact" which is set forth in it, and we found not one man who believed in it. . . . It is a mere fiction, which served its turn against tyranny, but cannot stand examination. Still, we could not alter that without altering the entire phraseology, which might peril the Constitution before the people.*

A minority report of the same committee, signed by its chairman (Sumner), Hallett, Burlingame, and Hillard, requested that in Article II the words "for his religious profession or sentiments concerning religion" be substituted for "for his religious profession or sentiments." Their object was to prevent a recurrence of the notorious trial of Abner Kneeland, who a few years before had been imprisoned two months for saying that the God of the Universalists "is nothing more than a chimera of their own imagination." Hallett, who had defended Kneeland, defended the principle before the Convention, but without success.³ The same minority also proposed an article giving juries

¹ *Debates*, I, 216.

² *Adams' Dana*, I, 235.

³ *Debates*, III, 416.

the right to determine the law as well as the facts in criminal trials. On this there was a long and interesting debate, full of legal theory and citations from the judicial history of the Commonwealth, between Butler, Hallett, Burlingame, and Judge Allen for the affirmative, and Sumner, Dana, Professor Parker, and John Chipman Gray the elder for the negative.¹ The article finally passed in amended form, but was submitted to the people as Proposition No. 3, instead of as a part of the Declaration of Rights. The same disposition was made of an article forbidding imprisonment for debt.

Chapter I of the new Constitution corresponded to Chapter I, Section I, of the old. The only new clause provided for members' salaries by standing laws, and limited the length of sessions to one hundred days, — a requirement commonly found in State constitutions both then and now.

Chapter II provided a Senate of forty members, apportioned according to population and elected by single districts of equal population. The committee, through its chairman Henry Wilson, defended the population basis against the legal voters basis, subsequently adopted by Amendment XXII (and still in force), as the only just rule. He insisted that the unnaturalized foreign-born population and the 10,000 factory girls of Lowell had a right to be fully represented because they were taxed, even though they could not vote. His view was finally adopted, after a long debate that went down to first principles.²

Chapter III, on the House of Representatives, proposed to settle the question that had agitated State politics for thirty years by a compromise between two contrary theories and systems, — town representation and district representation. The Convention, it will be remembered, had been promoted largely by those who wished to turn the balance of power in favor of the country towns. Whiting Griswold, the leader of this movement, was appointed by President Banks chairman of the com-

¹ *Debates*, III, 430, 437-463, 497-517. Hallett argued that the amendment merely recognized the old common law, which had been overridden in the case of *Commonwealth v. Porter*, in which he had been attorney for the defendant. Dana remarked: "The gentleman from Wilbraham is a little disposed . . . to make this Convention a court of errors, to rectify the decisions of courts given in cases which he has lost. . . . He would make this Convention hinge on the Dorr controversy, and Abner Kneeland and Zachary Porter."

² *Debates*, I, 190-212.

mittee on the House of Representatives. The majority report, presented by him on June 14, made the Convention gasp for breath. It proposed that every town, no matter how small, might elect one Representative every year; that a town of 5,000 inhabitants elect two and that 5,000 be the mean increasing number giving an additional Representative, — except that no city, however large, should have more than thirty. The minority report of the committee, presented by William Schouler of Boston, proposed substantially the system in force to-day, whereby the towns are combined and the large cities are divided into representative districts of equal population.

The long debate on representation completely upset all previous values of radical and conservative. The reform Coalition party defended the reactionary scheme of town representation which Griswold introduced with fifty columns of rhetoric replete with historical argument, and with an appeal to return to the ancient system of the Pilgrims and the Puritans, — the system into which Amendments XII and XIII had already driven an opening wedge.¹ The conservative party, led by Rufus Choate, supported the district system, by which every section of the Commonwealth would be equally represented according to population. At bottom it was simply the old sectional struggle between town and country. As the conservatives still controlled the cities and manufacturing towns, they proposed a radical change which would increase their power. And as the rural towns, true to their traditions of Shays' time, supported the radical Coalition party, that party promoted a reactionary change to intrench itself in power. As Robert Rantoul showed in debate, the Griswold system would enable two hundred small towns, with less than one-fourth the total population, to elect one-half the Representatives.²

All the ablest orators in the Convention participated in this debate, the inconsistent position of each side giving abundant opportunity for deft thrusts and sharp sarcasm. It is humorous to-day to find Benjamin F. Butler, who entered politics as the spokesman of the factory operatives of Lowell, arguing for a practical disenfranchisement of his own constituents, while Rufus Choate, who loved the "rust of the Constitution" and

¹ *Debates*, I, 809-835.

² *Debates*, I, 846.

cherished the ancient institutions of New England, advocated the equal and democratic district system that eventually broke the power of the Whig oligarchy whose chosen spokesman he was.

In this debate occurred the memorable passage between Richard H. Dana, Jr., and George S. Hillard. Dana, on June 17, made one of the greatest speeches of the Convention,¹ in which everything that could be said in favor of town representation was said. The best Representatives, he maintained, came from the towns, because chosen by a deliberative assembly, the town meeting. If the town unit is abandoned for the larger districts, members of the House will be chosen in district conventions by the party machine. Furthermore, the absolute equality of the district system would work injustice to the country towns. An enormous concentration of wealth and population was taking place in the cities. The country was being sucked dry. Already the Convention had provided for a Senate based on population, and a Governor and Council elected by a majority. Some check was needed in the House in order to protect rural and farming interests against corporate wealth, the proletariat and the foreign born. "It is a mistake to treat the one million inhabitants of Massachusetts as if they were so many units. They are formed into organizations and communities, having common interests and objects, and some of these are one hundred times stronger than others."

On June 23, George S. Hillard, who represented the social and literary élite of Boston, made a glowing defence of the civic virtue and bountiful charity of the wealthy men of the capital, in the course of which he rebuked Dana with a phrase that stuck to its author the rest of his life: "The gentleman from Manchester, in the course of his remarks, let fall a drop or two of blistering dew upon the city of Boston. I winced a little at that portion of his speech. . . . I am sorry that he should have cast one stick upon a fire, out of whose heat none but vipers can come. As the bread that he and I both eat comes from the business community of Boston; from men, some of whom are rich and all of whom hope to be rich, it does not become us, like froward children, to strike at the hand that feeds us." To

¹ *Debates*, I, 941-949.

which Dana replied: "The hand that feeds us! The hand that feeds us! Sir, no hand feeds me that has any right to control my opinions!"¹

After many more days of debate the Convention adopted a system of town representation not quite so raw as that of the "gentleman from Greenfield, for Erving." According to Chapter III, Article II, of the new Constitution, every town of less than 1,000 inhabitants may elect one Representative in the valuation year, and, in addition, one Representative five years in every ten; every town between 1,000 and 4,000 may elect one Representative, and 4,000 shall be the mean increasing number; towns of less than 1,000 may combine in order to elect a Representative every year; and cities must be divided into districts electing not more than three Representatives each. As a sop to the cities, Chapter XIV, Article IV, required the Legislature of 1856 to submit to the people an amendment adopting the pure district system.

Marcus Morton estimated that Chapter III, Article II, would give five Representatives to New Bedford, with a population of 16,441, and thirty Representatives to thirty towns with an aggregate of 16,292; three Representatives to Fall River, with a population of 11,170, and twenty-three Representatives to twenty-three towns with an aggregate of 11,308.

Chapters IV and V, on the Governor and Lieutenant-Governor, dropped the old titles and property qualifications, but made no other change in the Constitution of 1780. The Governor's power was diminished in another chapter by lessening his patronage.

Benjamin F. Hallett, as spokesman of the Convention committee on the Governor's Council, recommended the abolition of that body. He proposed to assign its advisory and confirming powers to the Senate (as in the Constitution of the United States and most State constitutions) and to a pardoning board, its financial powers to the Auditor, and its other duties to the Governor.² But the Convention, as usual, refused to take back its action. The bugaboo of "one-man power" was revived by Edward L. Keyes of Dedham. To abolish the Council would make the Governor a "Louis Napoleon." He repudiated the

¹ *Debates*, II, 129, 130.

² *Debates*, I, 338.

popular idea "that this Council have nothing to do, during the long sessions but to tell stories and read the newspapers." It saves its expense many times over by examining the accounts.¹ Ex-Governor Boutwell's testimony as to the usefulness of the Council carried weight. After much lachrymose eloquence on the pardoning power, the Convention decided to retain the Council but have it elected by the people. Chapter VI of the Constitution of 1853 made this proposal, which was later incorporated by Article XVI.

During the Revolution the doctrine that all officials, executive, county, and judicial, should be elected by the people, was popular in Massachusetts. Many towns in 1780 objected to the Constitution because of the wide appointive powers given the Governor and Legislature. This feeling never entirely died out, and in the second quarter of the nineteenth century it was adopted by Jacksonian Democracy. Beginning with Mississippi in 1832, the States one after another amended their constitutions to introduce popular election of State secretary, treasurer and minor executive officials, sheriffs and other county officials, justices of the peace and the entire judiciary. After sweeping through the rest of the country, this movement reached its culmination in Massachusetts in the Convention of 1853. The amendments then submitted were rejected, but later some of the changes suggested at that time were adopted.

Chapter VII provided for the annual election of the Secretary, Treasurer, Auditor, and Attorney-General; and for triennial election of all county officials, including judges of probate. Little opposition was offered, save in the last-mentioned item, which ran up against the general reluctance to alter the judicial tenure. In the debate George S. Hillard cut back at his opponents, who had been taunting him with the unfortunate "hand that feeds us" phrase. Benjamin F. Butler, complaining of the arrogance of judges of probate, remarked that "one of the best methods of polishing the manners of some of our judges is to subject their office to the popular vote." Hillard replied:—

The occupation of a judge is trying to the patience and the spirits. . . . Especially is he tried by the bad manners of a portion of the bar. . . . There are men at the bar . . . whose professional bearing is marked by

¹ *Debates*, I, 449-456.

coarse brutality and foul-mouthed ferocity . . . who import their morals from the State Prison, their manners from a bear-garden, and their language from Billingsgate. Who has not seen lawyers of this stamp swaggering about a court-house, with the port and bearing of a bar-room bully, after his second mug of flip, insulting witnesses, treating the opposing counsel with indignities studied and unstudied — and especially hectoring and browbeating the bench? . . . So long as we have jackalls and hyænas at the bar, I hope we shall have a lion on the bench, who with one stroke of his vigorous paw, can, if need be, bring their scalps right down over their eyes.¹

Marcus Morton, ex-justice of the Supreme Judicial Court, was chairman of the committee on the judiciary, which, by exception, included no prominent Radical. Its report proposed no other amendment to Chapter III than the abolition of Article II, on judicial opinions. This fell short of the wishes of the Convention. Henry Wilson at once proposed an amendment for the appointment of judges of the Supreme Judicial Court for a ten-year term, and other judges for a seven-year term, all to be eligible for reappointment until seventy years of age.² Dr. Foster Hooper of Fall River proposed to have all judges elected by the people for seven years. On these three proposals came one of the most prolonged and interesting debates of the Convention. "All are united in regard to the importance of securing and possessing an independent, able and learned judiciary," said Henry Wilson. He deemed "an elective judiciary more in accordance with the theory of our democratic institutions, more in harmony with the genius and spirit of our American ideas," but did "not think the people ready to adopt such a system." Furthermore, the studious avoidance by the reformers of any reference to the judiciary during the struggle to bring about the Convention imposed upon them the obligation not to press an elective system in the Convention.³ But he offered no positive argument for his amendment. Dana made one of his best speeches in favor of retaining the old system.⁴ "Is it not a fundamental maxim of America, that no change should be made until you find an existing evil to be remedied? . . . Is there any abuse existing? Has any man heard of an abuse? . . . Have we any indication that the public wishes any change here?" In

¹ *Debates*, II, 259, 474, 528.

² *Debates*, II, 684.

³ *Debates*, II, 703, 704.

⁴ *Debates*, II, 756-770.

New York, and the other States that elect their judges, the judiciary has "fallen into the political cauldron." New York's action was excusable, for she had suffered under her old judicial system; but we have not suffered. The infrequent exercise of the power of removal proves it. He concluded by comparing Dr. Hooper and Mr. Wilson to two surgeons who seize a man in health to try experiments on him, and yet cannot agree upon what they shall do.

In spite of Dana's challenge for complaints against the judiciary, nothing but trivial and irrelevant charges, including the curious one that the judges had not yielded to local opinion in the Sims fugitive slave case, were preferred in the debate. Rufus Choate brought his powerful eloquence to the defence in his great oration on the good and upright judge.¹ Francis W. Bird of Walpole made a strong argument in favor of the elective judiciary, which he considered "just as inevitable and just as necessary as an elective governor and legislature have been in times past."² Benjamin F. Hallett called the Massachusetts Bench irresponsible; it needed accountability, — "give me accountability." As judges are "not only independent of the people, but independent of good manners; independent, if they choose to be, of their own consciences and convictions; independent of any errors which they may make in judgment; independent of the grossest partiality, in fact of everything but crime, while they may be dependent upon, and may, unconsciously and honestly yield to the political and social influences that surround them — these cliques, these clubs, those circles, that are drawn around them as men and politicians before they are judges, and under the influence of which they go upon the bench."³

At the close of this speech, on July 14, the Hooper amendment was defeated by a vote of 101 to 226, and the Wilson amendment, after a close race was at last rejected by a vote of 158 to 160. "The rejoicings and congratulations of the Boston members and the conservative men generally knew no bounds," writes Dana. "The judiciary question was considered as settled," he continues, "and many of the reformers told me

¹ *Debates*, II, 799-810; *Works of Rufus Choate*, II.

² *Debates*, II, 818.

³ *Debates*, II, 828.

they were satisfied with the result. . . . But the newspapers made an outcry, . . . and some began to fear that they had not done enough to meet the reform tendency of the Democracy." On July 20, J. S. C. Knowlton of Worcester revived the whole subject with a resolution for a limited appointment, similar to that of Henry Wilson. In vain were all the Conservative orators thrown into the breach; the most they could obtain were a few minor changes. Chapter VIII of the Constitution of 1853, on the Judiciary, provided a ten-year term for judges, appointed by Governor and Council, and eligible for reappointment; a seven-year term for justices of the peace; and election of trial justices and judges of police courts by the towns and cities. "So, the whole judiciary effort," wrote Dana, "has ended in changing the life tenure to ten years; a change that gives but little gain to popular power, while it works one certain evil, it subjects each judge to the temptation or the suspicion of commending himself to the executive during the last year or two of his term."¹

A separate chapter (IX) on the qualifications of voters and elections was one great improvement in the Constitution of 1853. Almost the whole of it was new. Article I adopted manhood suffrage with six months' residence qualification. But this was not allowed to pass without a plea for woman suffrage. Two petitions, headed by Francis Jackson and Harriet L. Randall, for striking the word "male" out of the Constitution, were introduced early in the session. On July 12 William B. Greene, the transcendentalist minister of Brookfield, rose to defend the principle. He maintained that women had not only a natural right to vote but a constitutional right, under the plain meaning of the Preamble and Article VII of the Declaration of Rights. "I know very well what course the Convention will take in this matter, and I know very well what answers I will receive, if I receive any. Sir, I call for arguments, not phrases. I profess, sir, to stand on democratic ground and would like to hear any Democrat rise up here and say that he believes the doctrine set forth in the Massachusetts Bill of Rights, and at the same time say that he will deny to women the exercise of their right to vote." Edward L. Keyes, who followed him in debate, ad-

¹ Adams' *Dana*, I, 240-242.

mitted that women had a right to vote, but insisted that it would be a mistake for them to "enter into conflict with men, in political and governmental affairs . . . that softness and delicacy of character, and those bland enchantments which bind the world in silken chains, would be lost, and lost forever. . . ." Daniel S. Whitney of Boylston said a word on the women's side, and the question was duly shelved.¹

Article II of Chapter IX provided for the secret ballot by requiring that all ballots (which until 1888 were printed by the various parties, and distributed before the election) be deposited in sealed envelopes furnished by the Commonwealth. A Coalition Legislature had adopted this system a year or two before in order to protect employees from compulsion; the Whig Legislature of 1853 repealed it, on the ground that it insulted the manliness and independence of the laboring men. The same line-up occurred in the Convention. The Rev. Samuel K. Lothrop of Boston asked the Convention to trust the people. Shubael P. Adams said that to his certain knowledge there was not a single moment during the presidential election of 1848 when the ballot boxes of Lowell were not closely watched by "overseers of a certain political stripe" in order to scrutinize employees' ballots. He had seen men forced to change their vote for fear of discharge. All was changed when the sealed ballot law went into effect, "for the votes all looked alike."

Article III. provided, for the first time in the history of the Commonwealth, for the registration of voters.

Article VII proposed to hold State and national elections on the same date, instead of a week apart, as had been required by Amendment X.

Articles V-IX were called by the opponents of this Constitution the "plurality patch-up." For many years the constitutional requirements for a majority instead of a plurality to elect all officers had been a nuisance. So long as there were only two parties, a majority was generally secured for one candidate; but powerful third parties had been common since 1830. The choice of Governor (under Chapter I, Section I, Article III) had frequently been thrust on the Legislature. Repeated ballotings, causing unnecessary delay and expense, had often been neces-

¹ *Debates*, II, 726-738.

sary to secure a majority for other elective officials. In one case twelve ballotings took place before a candidate could be elected; and one Congressional district, for a failure to give one of these candidates a majority, remained unrepresented for the entire Congress. The plurality system for all elections had long been agitated; its necessity had been emphasized as one of the main reasons for holding the Convention, and the popular mandate thereon was clearer than on any subject save representation. The committee on elections, presided over by Henry W. Bishop of Lenox, reported in favor of the plurality system. The conservative side pressed for it, but most of the "reformers" developed a sudden tenderness for the old majority system, from which the Coalition party had greatly profited in the past. The report was recommitted to Benjamin F. Butler *et al.*, who reported the "plurality patch-up" of Chapter IX.¹ William Schouler attempted to restore it to the form of the original report (plurality for all elections), but his resolve was rejected by a vote of 159 to 160, the casting vote of President Banks deciding in the negative.² Chapter IX adopted the plurality system for Councillors, Senators and county officials, but maintained the majority rule for all others, "until otherwise provided by law." "You talk to me about principle", said Josiah G. Abbott, "when you have given up all principle, and all that you have got in exchange, is something to go into the legislature and trade upon. . . . That is so apparent, that it sticks out in every direction; the lion's skin is not a quarter large enough to cover something that I will not give any name to."³

Chapter X included everything in the Constitution on oaths, disqualifications for office, writs and commissions, only a few minor changes being adopted. Chapter XI was devoted to the militia. It was a serious attempt to strengthen and popularize that force, then in a most depressed condition, by having every officer, from major-generals down, elected by the members of the grade below. Article II provided that "All citizens of this Commonwealth liable for military service . . . shall be enrolled in the militia, and held to perform such military duty as by law may be required."

Chapter XII corresponded to Chapter V of the Constitution

¹ *Debates*, III, 86.

² *Journal*, 240; *Debates*, III, 134.

³ *Debates*, III, 153.

of 1780. The "University at Cambridge" had its usual overhauling, and a clause was introduced declaring the right of the Legislature to alter the powers vested in that corporation, "provided, the obligation of contract shall not be impaired." Article IV protected the school fund against misappropriation.

Chapter XIV provided that a popular vote on the question of calling a new constitutional convention may be held by action of the Legislature, on the demand of towns and cities containing one-third of the votes, and, in any case, every twenty years. Article III repeated Amendment IX, and Article IV provided for the special constitutional referendum on the district system of 1856.

This was the last chapter of the Constitution of 1853. But many contentious points were embodied in the seven additional propositions. No. 2 related to the writ of habeas corpus. No. 3 provided that the jury in criminal cases should have the right to determine the law as well as the facts. No. 5 forbade imprisonment for debt (which had already been abolished by law). No. 6, forbidding appropriations for sectarian schools, was subsequently adopted as Amendment XVIII.

This anti-sectarian amendment was proposed, so George W. Blagden explained for the committee, in order to put a stop to the pressure for public funds from certain religious sects for the support of their denominational schools. Francis W. Bird proposed that the colleges be included, and gave an account of the collegiate drive upon the State treasury a few years before. Charles W. Upham maintained that the amendment might cause considerable trouble, since the common schools of the State themselves had a sectarian character.¹ The most interesting debate came on a motion for reconsideration, after it had been formally adopted. Nathaniel Wood of Fitchburg and Benjamin F. Butler argued that the amendment was unfair to the Roman Catholics, who could not conscientiously send their children to public schools as then conducted. Francis W. Crowninshield of Boston said: "I can assure these gentlemen, their Catholic friends are not to be caught by such chaff as this. . . . Gentlemen have sat in their seats while this provision has passed through all of its stages to its final passage, and no voice

¹ *Debates*, II, 543-550.

was raised against it. And now, on the very last day . . . but one of the sessions, lo! a violent indignation is gotten up against the resolution, and it is insisted that it must be expunged." The motion to reconsider failed, 87 to 183.¹

Propositions Nos. 7 and 8 were a laudable attempt to further the movement for general incorporation laws, in which Massachusetts was the pioneer State.

(d) *Adoption by the Convention, rejection by the People.*

Monday, August 1, was the last day of the Convention. At 10.15 A.M. the printed draft of the new Constitution and the changes submitted separately was circulated among the members, and the final debate began. Boutwell, in spite of his weariness, led the defence of the new Constitution, which was subjected to severe criticism from Ex-Governor Morton, Otis P. Lord, and George S. Hillard. Boutwell was called upon to explain upon what principle some changes were incorporated in the Constitution, and others submitted as separate propositions. He replied that the committee desired to give the people "an intelligible and systematic organic law," which could not be had by allowing them to express a distinct opinion upon every separate change. It therefore placed in the new Constitution "so much and many of the resolutions adopted by this Convention as were necessary to perfect and make harmonious the government which we propose to establish;" the seven separate propositions were "not necessary to the working of the government," and of such nature that they may be rejected or adopted without disturbing the harmony of either the old or the new Constitution.²

This statement, inevitably, opened the door for a flood of such questions as "Why did you leave out this and put in that?" The real principle of choice, of course, was individual preference. That none of the thirty-five changes were strictly necessary to the working of the government, their total rejection proved. The committee had simply selected those it thought most desirable to incorporate into the new Constitution and discarded the rest; though necessarily, in many cases, a

¹ *Debates*, III, 613-626.

² *Debates*, III, 655.

group of changes could not be separated. There was no logical reason, for instance, for incorporating the secret ballot and discarding imprisonment for debt. There followed a series of amendments offered by Conservatives with a view to dismantling the new Constitution. Otis P. Lord moved to separate the new system of representation, taking the view that the new Constitution had been built up around this nucleus in order to sweeten it, that the majority dared not to trust the people "to accept it on its own merits." Hillard compared the majority to the Arab who proposed to sell his camel for five ducats and his cat for a hundred, provided the same purchaser takes both. But the motion was rejected, 91 to 205.¹

Similarly, Rufus Choate proposed to remove from the Constitution and submit as four separate propositions the changes in judicial tenure. But Dana and Boutwell showed that this might leave the Commonwealth without any judiciary. In Chapter XIII a few minor changes in phraseology were agreed to.

After the fourteenth and last chapter had been read, Ex-Governor Morton delivered a speech which turned out to be prophetic: —

I fear, Sir, that we have somewhat forgotten the mission upon which we were sent to this house; that we have been acting together in the exercise of unrestrained power, till we have forgotten the source of our authority, and have not sufficiently borne in mind the wishes and rights of those who stand behind us, to act upon the propositions which we may submit to them. I fear that, while we profess democracy, and a love for the people, we have acted on an opposite principle. Distrust of the people is stamped on almost every act. Look what was said with regard to the State credit. It was avowed, by some of the majority — I do not remember whom — that "the" people could not be trusted with power in regard to this matter. And what was the result? They were divested of the power to decide where the credit of the State might be loaned or given away. What! Not trust the people with the management of their own money, and their own credit! And, Sir, it has been just so with regard to every other act. No principle, however sound and just, is fully carried out. So it was with regard to the secret ballot. . . . Just so, likewise, was it in regard to the plurality question. You would not let the people decide the question, for or against it, as they might choose. And in regard to the subject of representation, the most important subject which

¹ *Debates*, III, 676-679.

was submitted to us, we have not only disregarded the well-known wishes of the people for the reduction of the House, but refused to allow them to decide between the town and district system. . . .

The Committee . . . have told us that their main desire, in putting the amendments together in this shape, was to preserve the symmetry and harmony of the instrument, and the beauty and orderly arrangement of the pamphlet to be published. I am afraid that gentlemen deceive themselves as to the real cause which has induced them to adopt this course. I am bound to believe that the gentlemen are sincere in their professions, and honestly believe that they are governed by the causes which they assign. But if they will look at the matter a little more disinterestedly, they will perceive how very difficult it will be to make outsiders believe it, and to prevent them from judging that, in order to carry some favorite but objectionable scheme, all the popular measures have been connected with it, to induce the people to vote for it, and thus to give it the force of a popular adoption, when it may be that a majority of them are opposed to it. They may possibly adopt the language of one of the Committee, on another occasion, and say: "The lion's skin is not big enough — not half big enough, to conceal that other animal, which I will not name. His ears are in full view."¹

Late in the evening of August 1 an address to the people, which Boutwell had somehow found time to draft during the day, was adopted, as well as resolves prescribing a form of ballot, etc., for the popular referendum; a committee was appointed to meet in December and count the votes; and at one in the morning, following a brief valedictory by President Banks, the Convention adjourned without day.

The Constitution of 1853 and the seven other constitutional propositions were voted upon at the regular State election on November 11, 1853. They were the subject of the liveliest constitutional canvass ever held in the history of Massachusetts. Most of the leading members of the Convention made public speeches that were widely circulated in newspapers and pamphlets, and the press devoted considerable space to the controversy. The entire weight of the Whig party was thrown against the Constitution, and they were reinforced by some notable defections from the ranks of the Free-Soilers and Democrats, — notably Ex-Governor Morton, John G. Palfrey, and Charles Francis Adams, first of that name. Hillard continued his opposition under the guise of "Silas Standfast" in the *Boston Atlas*;

¹ *Debates*, III, 703-704.

George Ticknor Curtis, as "Phocion," devoted his literary ability to the same end in the columns of the *Advertiser*. On the other side, Dana, Boutwell, Hallett, and Wilson defended their work.

Everything was rejected. The vote on Proposition No. 1, the Constitution of 1853, was 63,222 to 68,150. All the other propositions except No. 3 secured a slightly higher affirmative vote, but the result was the same. No. 6, on sectarian schools, was lost by only 401 votes. Various interpretations are given by contemporaries. Some assert that the system of representation was the principal factor; others, the alteration of judicial tenure. It is also pertinent to indicate that the vote closely followed party lines, that the power of the Coalition was waning, that the national administration ordered Democrats to break off their unholy alliance with Free-Soil "abolitionists," and that the Whig party won the State election on the same date. "Warrington" (William S. Robinson) states in his "Pen-Portraits" that Abbott Lawrence employed forty-one orators to perambulate the State in the interest of rejection, but humorously gives twenty-two other reasons for the result. Boutwell, Butler, and Dana ascribe the defeat to the "Irish vote," though not for the same reason. The *Boston Pilot* did oppose the new Constitution vigorously, giving much the same reasons as the Whig press, but an analysis of the Boston vote shows that the wards where most of the Irish-born population then lived did not poll so heavy a negative vote as the fashionable residential districts. The resentment of all city dwellers at the unjust scheme of town representation was undoubtedly a leading cause. Analysis of the vote on Proposition No. 1 by counties shows that every tide-water county was opposed, and every inland county but Hampshire in favor. It was country against city, the old order against the new, and the new won by preserving the old Constitution.

5. PERIOD 1854-1915.

If inclined to be sarcastic one might say that the Convention of 1853 labored seventy-two days, and brought forth — three fat volumes of debates. Yet in spite of the immediate rejection of all its proposed changes, the more worthy and popular ones

have since become incorporated in the Constitution by single amendments, and as an educational force in constitutional matters the Convention justified its existence.

The Whig Legislatures of 1853 and 1854 did the Convention the compliment of adopting several of its propositions in five amendments, which were accepted by the people by a large majority at a special election on May 23, 1855. Article XIV adopted the plurality principle for all elections. Article XV shifted the State election a week ahead, to the national date. Article XVI provided for popular election of eight Councillors in single districts of equal population, and for a speedier organization of the administration at the opening of the political year, — a reform that had been urged in the Convention but not adopted. Article XVII lengthened the ballot with four minor executive officers. Article XVIII was the Convention's Proposition No. 6, forbidding the appropriation of taxes for private or sectarian schools. Article XIX permitted the Legislature to provide by law for the popular election of county officials; and the Convention's suggestion of a three-year term is now the rule.

The three amendments ratified on May 1, 1857, belong to the same group. Article XX prescribed a literary qualification for the franchise. Article XXI was one of the greatest constitutional reforms ever adopted in this State. It solved the vexatious question of representation by providing for a House of 240 members, apportioned decennially according to the number of legal voters, in representative districts electing not more than three members each. It also increased the quorum to 100 members, which in 1891 was still further increased to a majority for each branch. Article XXII extended the district system to the Senate.

Other proposed reforms in the Constitution of 1853, such as the secret ballot and registration of voters, were adopted by legislative enactment.

This group of eight amendments is what Massachusetts chose from the wave of democratic constitutional reform that swept through the United States during the middle of the nineteenth century. Popular election of minor officials and equality in representation were typical manifestations of this movement.

But many things that crept into the constitutions of her sister States Massachusetts did not need or care to adopt. Among these may be mentioned abolition of judicial tenure during good behavior, and those numerous limitations on the power of legislatures that spin out other constitutions to interminable length. The Commonwealth has been reluctant to introduce reforms through the fundamental law that may equally well be secured through the statutory law. Her constitutional development has been conservative, in the best sense of that word.

Fifteen constitutional amendments were adopted in the half century between 1859 and 1909. Some removed disqualifications for the franchise, in favor of Civil War veterans and others; several cleared up doubtful or disputed points in the Constitution as to the filling of vacancies, place of voting, etc.; a few were minor reforms; none were fundamental. Article XXXIX permits excess condemnation of land in connection with the laying out, widening, or relocating of highways. Article XL disfranchises persons guilty of corrupt practices in elections. The use of the taxing power for the encouragement of the afforestation of wild lands is authorized by Article XLI, while the Legislature is empowered by Article XLII to refer any of its acts or resolves to a popular vote. Article XLIII makes it possible for the Commonwealth to take and hold land for the purpose of relieving congestion of population. The last amendment, Article XLIV, adopted in 1915, radically modified the tax system of the State by authorizing the substitution of an income tax for the general property tax which had heretofore been the chief reliance for revenue.

VII.

TABULAR SUMMARY OF THE CONSTITUTIONAL CONVENTIONS OF MASSACHUSETTS.

	Convention of 1777-78 (House and Council).	Convention of 1779-80.	Convention of 1820-21.	Convention of 1833.	Convention of 1917.
Date of enabling act,	May 5, 1777.	February 20, 1779.	June 16, 1820.	May 7, 1833.	April 3, 1916.
Popular vote thereunder:—					
Date,	May, 1777.	April and May, 1779.	August 21, 1820.	November 8, 1832.	November 7, 1916.
Yeas,	No record.	6,612.	11,756.	66,416.	217,293.
Nays,	No record.	2,639.	6,593.	59,112.	120,979.
Date of election of delegates,	May, 1777.	June, October, 1779, May, 1780.	October 16, 1820.	March 7, 1833.	May 1, 1917.
Dates of sessions,	At intervals, June 15, 1777, to February 26, 1778.	September 1-7, 1779; October 28-November 11, 1779; January 5 to March 2, 1780; June 7-15, 1780.	November 15, 1820, to January 9, 1821.	May 4 to August 1, 1833.	June 6, 1917, to—
Place of sessions,	Representatives' Chamber, Old State House.	First Church, Cambridge; Representatives' Chamber, Old State House; Brattle Street Church, Boston.	Representatives' Chamber, State House.	Representatives' Chamber, State House.	Representatives' Chamber, State House.
Length of sessions,	36 days.	64 days.	47 days.	72 days.	
Number of delegates,	302.	312.	485.	419.	320.
Quorum,	No record.	No rule.	100.	100.	161.
Pay of delegates,	Nothing additional.	Optional with towns.	\$2 per diem.	\$3 per diem.	Not more than \$750.
President,	Jeremiah Powell.	James Bowdoin.	Isaac Parker.	Nathaniel P. Banks, Jr.	—
Secretary,	Samuel Freeman.	Samuel Barrett.	Benjamin Pollard.	W. S. and J. T. Robinson.	—
Date of popular vote on revision,	June, 1778.	March to June, 1780.	April 9, 1821.	November 14, 1833.	—
Popular vote:—					
Yeas,	2,083.	—	22,726. ¹	63,222. ²	—
Nays,	9,972.	—	6,444.	68,150.	—

¹ Vote on Proposition No. 8, the highest total on any accepted.

² Vote on Proposition No. 1, the new Constitution.

VIII.

BIBLIOGRAPHY.

1. GENERAL.

There is great need of a comprehensive constitutional history of Massachusetts that will trace the formation of our fundamental law from the beginning, describe the political, social, and economic conditions back of our constitutional changes, and trace the modifications that have been brought about through decisions and opinions of the courts on constitutional subjects. The only book we have on the subject at present is —

Louis A. Frothingham, *A Brief History of the Constitution and Government of Massachusetts*. Cambridge, 1916, pp. 140.

For a comparison of the Constitution and Government of Massachusetts to those of other States, see

William C. Webster, "Comparative Study of the State Constitutions of the American Revolution," *Annals of American Academy of Political and Social Science*, IX, 380-420 (May, 1897).

William C. Morey, "The First State Constitutions," *Annals of American Academy of Political and Social Science*, IV, 201, 232 (September, 1893).

Arthur N. Holcombe, *State Government in the United States*. New York, 1916, pp. 498.

There are three published addresses of some historical value:

James Savage, *Constitution of Massachusetts. Address delivered before the Massachusetts Lyceum*, 1832, pp. 12.

Alexander H. Bullock, *The Centennial of the Massachusetts Constitution*. Worcester, 1881, pp. 56. (Reprinted from the *Proceedings of the American Antiquarian Society*, N. S., I.)

Arthur Lord, "The Massachusetts Constitution and the Constitutional Conventions." An address before the Massachusetts Bar Association, 1916. (*Massachusetts Law Quarterly*, II, Special Number, October, 1916, pp. 32.)

The popular vote on Amendments I to XLIV to the Constitution will be found in the above pamphlet, page 31. The vote on Amendments proposed but rejected is given in *Old South Leaflet*, No. 209. The vote on all questions of calling a constitutional convention from 1779 to 1916, compared with the vote

for Governor at the nearest election, is given in the *Proceedings of the Massachusetts Historical Society* for April, 1917.

No one of the existing histories of Massachusetts or New England pays much attention to constitutional history. Detailed information on constitutional development must be gleaned from a variety of sources and secondary authorities.

The Old South Leaflets (published by the Old South Association, at the Old South Meeting House, Boston) contain several useful documents in constitutional history: —

No. 7. The Colony Charter of 1629.

No. 8. The Body of Liberties, 1641.

No. 209. The Rejected Constitution of 1778, with a List of Rejected Amendments to the Constitution of 1780, and Useful Notes.

2. COLONY AND PROVINCE.

The colonial and province charters are printed in *The Charters and General Laws of . . . Massachusetts Bay* (binders' title, *Massachusetts Antient Charters and Laws*). Boston, 1814.

A comprehensive and illuminating account of the constitutional development of Massachusetts under the Colony charter is given in Herbert L. Osgood, *The American Colonies in the Seventeenth Century*, I, Part 2, chaps. I-V, XI-XIII.

The only accurate account of constitutional changes in the inter-charter period is in Albert Matthews, *Notes on the Massachusetts Royal Commissions, 1681-1775*. Cambridge, 1913, pp. 14-28. (Reprinted from *Publications of the Colonial Society of Massachusetts*, XVII.)

The Province Charter of 1691 and Explanatory Charter of 1725 are accurately printed in the *Publications of the Colonial Society of Massachusetts*, II.

There is no comprehensive work on constitutional development during the provincial period, but the following are useful monographs: —

Evarts B. Greene, *The Provincial Governor in the English Colonies of North America* (Harvard Historical Studies, VII), and *Provincial America, 1690-1740* (The American Nation, a History, VI).

Everett Kimball, *The Public Life of Joseph Dudley* (Harvard Historical Studies, XV).

H. R. Spencer, *Constitutional Conflicts in Provincial Massachusetts, to 1740*. (Columbus, 1905.)

O. M. Dickerson, *American Colonial Government, 1696-1765*. (Cleveland, 1912.) Describes the relations between the Province and the English government.

The constitutional conflict that preceded the American Revolution is described from the patriot viewpoint in John G. Palfrey, *History of New England*, V (Boston, 1890), and from the Tory viewpoint in Governor Thomas Hutchinson, *History of the Province of Massachusetts Bay*, III (London, 1828).

3. REVOLUTIONARY PERIOD.

The constitutional changes of the Revolutionary period may be found with some effort in Harry A. Cushing, *History of the Transition from Provincial to Commonwealth Government in Massachusetts*. (Columbia University Studies in History, etc., VII, No. 1. New York, 1896.)

A detailed account of the way the Constitutional Conventions of 1777-1778 and 1779-1780 were summoned will be found in the *Proceedings of the Massachusetts Historical Society* for April, 1917. The Manuscript Journal of the Convention of 1777-1778 and a copy of the printed report of its committee are in the State Archives, Vol. 156. The Constitution of 1778 is printed in a contemporary pamphlet, in the appendix to Alden Bradford, *History of Massachusetts*; in the printed *Journal of the Convention of 1779-1780*, and in *Old South Leaflet*, No. 209.

"The Essex Result" (*Result of the Convention of Delegates Holden at Ipswich in the County of Essex*. . . . Newbury-Port, 1778) is reprinted in T. Parsons, *Memoir of Theophilus Parsons* (Boston, 1859), pp. 359-402.

4. THE CONVENTION OF 1779-1780.

The principal source for the Convention of 1779-1780 is the *Journal of the Convention* (published by order of the Legislature, Boston, 1832). The appendix contains the committee's report on which the Constitution was based, and the Convention's address to the people. John Adams's original draft is also printed, with excellent notes, in C. F. Adams, *The Works of*

John Adams (Boston, 1851), IV, 213-267. His other writings on government are printed in the same volume.

Emory Washburn, "Origin and Sources of the Bill of Rights in the Constitution of Massachusetts," *Proceedings of the Massachusetts Historical Society*, VIII, 294-313 (June, 1865).

Charles Deane, "Judge Lowell and the Massachusetts Declaration of Rights," *Proceedings of the Massachusetts Historical Society*, XIII, 299-304 (April, 1874).

S. E. Morison, "The Struggle over the Adoption of the Constitution of Massachusetts," *Proceedings of the Massachusetts Historical Society*, May, 1917.

5. THE CONVENTION OF 1820.

The debates at this Convention were reported in the *Boston Daily Advertiser*, and reprinted as *Journal of Debates and Proceedings in the Convention of Delegates, . . . holden at Boston*, November 15, 1820. . . . Boston, 1821, pp. 292. A new edition, (pp. 677) with much better type and paper, was brought out in 1853. The appendix contains the popular vote by counties on the propositions submitted by this Convention. Neither edition contains the official journal, which has never been printed. The original manuscript, together with such ~~pages~~ ^{papers} of the Convention ~~Journal~~ as have been preserved, may be found in the State Archives, Miscellaneous Files, Box 19.

A few committee reports were printed separately, notably Daniel Webster's *Report upon the Constitutional Rights and Privileges of Harvard College* (pp. 16), January 4, 1821. They will also be found in both editions of the *Journal of Debates and Proceedings*. The results of the Convention were published by it in a pamphlet entitled *Amendments of the Constitution of Massachusetts, proposed by the Convention of . . . eighteen hundred and twenty; with their Address to the People of this Commonwealth*. Boston, 1821, pp. 32. There is also a separate edition of the *Rules and Orders*.

6. THE CONVENTION OF 1853.

(a) *Preliminary Pamphlets.*

Report of the Joint Special Committee of the Legislature of 1852 in favor of a Convention to revise the Constitution of Massachusetts. Boston, 1852, pp. 32.

A Few Facts And Reasons Why A Convention Should Be Called to Revise the Constitution. Published under the direction of the Democratic State Convention. Boston, 1852, pp. 24.

(b) *Official Documents.*

Journal of the Constitutional Convention of the Commonwealth of Massachusetts . . . of 1853. . . . Published by order of the Convention. Boston, 1853, pp. 560.

Official Report of the Debates and Proceedings in the State Convention Assembled May 4th, 1853, to Revise and Amend the Constitution of the Commonwealth of Massachusetts, Boston, 1853. Three volumes, pp. 994, 840, 797. The Appendix to Vol. III contains the act of May 7, 1852, the vote by towns and cities on the question of calling the Convention, and on the revised Constitution and constitutional propositions submitted by the Convention, and the test of the latter by towns and cities.

There is also a two-volume quarto edition of the same date and title, printed on inferior paper.

Documents Printed by Order of the Constitutional Convention . . . during the Session, A.D. 1853. Boston, 1853.

Rules and Orders to be Observed in the Convention of Delegates for the Commonwealth of Massachusetts, . . . 1853. Boston, 1853, pp. 137.

Constitution, or Form of Government of the Commonwealth of Massachusetts. No title page; pp. 40. This is the preliminary draft, completed at 10.30 P.M. July 31, and circulated in the Convention the following morning.

The Constitutional Propositions Adopted by the Convention of Delegates, . . . A.D. 1853, and Submitted to the People for their Ratification, With an Address to the People of Massachusetts. Boston, 1853, pp. vii, 50. This is the official edition circulated throughout the Commonwealth.

Poole's Statistical View of the Convention of . . . 1853. Boston, 1853, pp. 26. Contains age, occupation, and residence statistics of the delegates, with a list of members of former constitutional conventions.

(c) *Controversial Pamphlets.*

Discussions on the Constitution Proposed to the People of Massachusetts by the Convention of 1853. Boston, 1854, pp. 306. Contains the "Letters of Phocion" by George Ticknor Curtis, the "Letters of Silas Standfast" by George S. Hillard, the Fitchburg address of Samuel Hoar, the Taunton address of Marcus Morton, the Quincy address of Charles Francis Adams, and the "Remarks By a Free-Soiler-from the Start" of John G. Palfrey. All these had already appeared in newspapers or separate pamphlets.

Address of Hon. George S. Boutwell to the People of Berlin upon the Provisions of the New Constitution, October 3, 1853. Boston, 1853, pp. 49.

Address of Hon. F. W. Bird to his Constituents Upon the Provisions of the New Constitution, Delivered at South Walpole, October 29, 1853. Boston, 1853, pp. 20.

Inequality of the Old Constitution, Advantages of the New. Boston, 1853, pp. 4.

Several other controversial pamphlets, by Hallett, Wilson, Lorenzo Sabine, and others, may be found in the Boston Public Library.

(d) *Accounts of the Convention.*

The best secondary account of the Convention is James Schouler, *The Massachusetts Convention of 1853*, pp. 19. Reprinted from *Proceedings of the Massachusetts Historical Society*, second series, XVIII, 30-48. (November, 1903.)

A most illuminating, first-hand account of the Convention by one of its leading members may be found in the extracts from the diary of Richard Henry Dana, printed in his *Biography*, by Charles Francis Adams, I. 239-51. (Boston, 1890.)

Reminiscences by other prominent members are in Benjamin F. Butler, *Butler's Book*. Boston, 1892. George S. Boutwell, *Reminiscences of Sixty Years in Public Affairs*. 2 vols., New York, 1902. The data on the Convention in this work are also published in the *Groton Historical Series*, IV, 409-414.



Massachusetts Historical Society

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Cabinet-Keeper.

GRENVILLE HOWLAND NORCROSS.

Editor.

WORTHINGTON CHAUNCEY FORD.

Members at Large of the Council.

SAMUEL WALKER McCALL.

BARRETT WENDELL.

JOSEPH GRAFTON MINOT.

LINCOLN NEWTON KINNICUTT.

WILLIAM CROWNINSHIELD ENDICOTT.

Professor MERRIMAN spoke on the Spanish Embassy to the Court of Timour (Tamerlane) in 1403.¹

Mr. MORISON presented a paper on

THE VOTE OF MASSACHUSETTS ON SUMMONING A CONSTITUTIONAL CONVENTION, 1776-1916.

On eight separate occasions the voters of Massachusetts have been required to express their opinion for or against calling a convention of delegates, or granting constituent powers to the legislature, to create or revise the fundamental law of the Commonwealth. The response was favorable in six out of the eight referenda, including the most recent, in 1916. I have thought it worth while to tabulate by counties the six votes on calling a convention, of which we have a detailed official record; together with, for purposes of comparison, the highest vote for Governor at the same or the nearest election, and a few other votes on constitutional questions. The arrangement by counties shows the sectional alignment, and the comparison with the highest vote at the same or nearest election enables one to estimate the comparative amount of interest shown by the voters in constitutional questions.

¹ See Markham, *Narrative of the Embassy of Ruy Gonzalez de Clavijo to the Court of Timour, at Samarcand*, A. D. 1403-6 (Hakluyt Society, 1860).

I. *Vote of 1776.*¹

On September 17, 1776, the House of Representatives of the State of Massachusetts Bay passed a resolve recommending the free male inhabitants of each town, twenty-one years and upward, in town meeting assembled, to "consider and determine whether they will give their consent" that the House and Council should resolve themselves into a constitutional convention, to "consult, agree on and enact" a "Constitution and Form of Government, for this State." The people are also to decide whether they wish the result of the Convention's labors to "be made public for the inspection and perusal of the inhabitants before the ratification thereof by the Assembly."²

In the Massachusetts Archives there are returns from only 97 towns on this vote,³ 74 being in favor of granting constituent power to the General Court and 23 opposed.⁴ The opposition, however, included such important towns as Boston, Concord, and Attleborough, several of which urged that the only proper organ for drafting a constitution was a convention of delegates especially elected for that purpose alone.⁵

Early in January, 1777, the House appointed a committee to examine these returns, "and to consider of, and report, the most proper measures to be adopted, in order to the establishing a new and good constitution and form of government." This committee was evidently more impressed by the strenuous protesting minority in the town returns than by the majority. It reported to the House, on January 28, 1777: "By the returns

¹ For the history of this first submission of a constitutional question to the people of Massachusetts, see Harry A. Cushing, *History of the Transition from Provincial to Commonwealth Government in Massachusetts* (Columbia Univ. Studies in History, etc., VII. no. 1), 188-202. The *Warren-Adams Letters, Collections* LII, should also be consulted.

² *Journal of the House of Representatives* for 1776, 110. There is also a broad-side edition of this resolve in Mass. Archives (CLVI, f. 180). The Massachusetts Legislature during the Revolution before the adoption of the present Constitution was often called the General Assembly as well as the General Court.

³ *Ib.*, ff. 121-191. They are dated between September 17 and November 18.

⁴ Tabulation by Dr. Fred E. Haynes in his "Struggle for the Constitution in Massachusetts" (ms. thesis in Harvard College Library, 1891), 85.

⁵ An argument for a full-fledged Constitutional Convention is first found in the return of Concord, dated October 21, 1776. Mass. Archives, CLVI. f. 182. It is suggested in an earlier return of Norton as an alternative only. A convention of Worcester County towns took similar action on November 26, 1776. Cushing, *op. cit.*, 191.

from the several Towns within this State, it appears to be the general expectation of the People, so far as returns are made, That there be a new Constitution and form of Government framed by themselves, so soon as conveniently may be." It also submitted an interesting draft resolve,¹ proposing the procedure subsequently followed in 1779. This recommends that the people be requested to elect delegates "for forming a general Convention, for the sole purpose of framing a new Constitution and form of Civil Government . . . and that every male person of twenty-one years of age and upwards, being liable to taxation, shall have right of voting" for the delegates. Such Constitution as the Convention may adopt, to be submitted to the towns for approbation or disapprobation; the returns to be counted by the Convention, which shall declare the Constitution in force if two-thirds of the people approve; or if not, to frame another and submit it, and so forth, until one meets the popular approval.

After various postponements, this report was brought up for discussion on March 27, 1777. The committee's resolve was defeated by a vote of 25 to 85.² Much time and energy would have been saved if it had been adopted.

II. *Vote of 1777, Authorizing the Constitutional Convention of 1777-78.*³

Immediately after rejecting this proposal of a full-fledged Constitutional Convention, the House made a fresh start toward securing constituent powers for itself. A joint resolve of May 5, 1777,⁴ recommended the qualified voters, at the State election the same month, to choose representatives "in whose

¹ It is to be found, together with the report of January 28, in Mass. Archives, CXXXVII. f. 138.

² *Journal of the House of Representatives for 1776-77*, 216, 244, 276, 285. Only a single copy of this *Journal* is known, that in the American Antiquarian Society, and even that is incomplete.

³ For the history of this vote of the Convention of 1777-78, and draft Constitution of February 28, 1778, see Cushing, *op. cit.*, 204-226; Haynes, *op. cit.*, 86-96; and *Old South Leaflet*, No. 209, containing the text of this Constitution. Vol. CLVI of the Mass. Archives contains the journal of the Convention, and a copy of the Committee Report upon which the Constitution of 1778 was based.

⁴ *Resolves of the General Assembly of the State of Massachusetts-Bay for 1776-77*, 44. It was also issued in broadside form, of which a copy is in the Mass. Archives, CLVI. f. 199.

integrity and ability they can place the greatest confidence," and to instruct them, in addition to their ordinary duties as representatives, to form one body with the Council and frame a Constitution. Said Constitution to be voted upon by the inhabitants in town meeting assembled, and to be established by the General Court as the "Constitution and Form of Government of the State of Massachusetts-Bay," provided it "is approved by at least two-thirds of those who are free and twenty-one years of age, belonging to this State and present at the several meetings."

There are no returns of the town votes under this resolve in the Massachusetts Archives; it would be necessary to go to the town records in order to find how the State divided on the question.¹ The newly elected House of Representatives, on June 5, 1777, appointed a committee "to call upon the members of the House to know what Instructions their Towns had given them relative to forming a new Constitution of Government, and to examine what returns are made on the Precepts in this Respect."² On June 12 this committee reported to the House, which then voted "to proceed in one Body with the Council to form a Constitution of Government, agreeable to the resolve of the General Court of the 5th of May."³ House and Council accordingly, on June 17, 1777, resolved themselves into the first Massachusetts Constitutional Convention.

I have been unable to discover any official tabulation of the returns of the popular vote on the draft constitution of February 28, 1778, submitted to universal suffrage by this convention on March 4, 1778.⁴ A contemporary newspaper statement gives the total vote: Yeas, 2083; nays, 9972.⁵

¹ Boston, for instance, voted unanimously to instruct its representatives not to take part in a constitutional convention formed by the General Court, and clearly indicated that it wanted no constitution not drawn up by a convention especially elected for that purpose. *Boston Record Commissioners*, XVIII. 284-286.

² *Journal of the House of Representatives* for 1777, 15. The Resolve of May 5 recommended to the selectmen "on the return of their precepts for the choice of representatives, to signify their having considered this resolve, and their Doings thereon." No precepts for this year are to be found in the Mass. Archives.

³ *Ib.*, 24.

⁴ There are 180 ms. returns in the Mass. Archives (CLVI. ff. 304-432; CLX. ff. 1-31), from which any one with the requisite time and patience could make an interesting tabulation by towns and counties, and analyze the causes of the rejection of this Constitution.

⁵ Haynes, *op. cit.*, 93, quoting *Continental Journal*, October 8, 1778; the same

III. *Vote of 1779, Authorizing the Convention of 1779-80.*

A House resolve of February 19, 1779, concurred in by the Council the following day, submitted two questions to the qualified voters in town meeting assembled, to be voted upon before the last Wednesday in May. "First, whether they desire at

State of *Massachusetts-Bay.*

In the House of REPRESENTATIVES, February 19, 1779.

WHEREAS the Constitution or Form of Civil Government, which was proposed by the late Convention of this State to the People thereof, hath been disapproved by a Majority of the Laborers of said State:

And whereas it is doubtful, from the Representations made to this Court, what are the Sentiments of the major Part of the good People of this State as to the Expediency of now proceeding to form a new Constitution of Government:

Therefore, *Resolved*, That the Selectmen of the several Towns within this State cause the Freemen, and other Inhabitants in their respective Towns duly qualified to vote for Representatives, to be lawfully warned to meet together in some convenient Place therein, on or before the last Wednesday of May next, to consider of and determine upon the following Questions.

First, Whether they chuse at this Time to have a new Constitution or Form of Government made.

Secondly, Whether they will empower their Representatives for the next Year to vote for the calling a State Convention, for the sole Purpose of forming a new Constitution, provided it shall appear to them, on Examination, that a major Part of the People present and voting at the Meetings called in the Manner and for the Purpose aforesaid, shall have answered the first Question in the Affirmative.

And in Order that the Sense of the People may be known thereon: Be it further *Resolved*, That the Selectmen of each Town be and hereby are directed to return into the Secretary's Office, on or before the first Wednesday in June next, the Doings of their respective Towns on the first Question above mentioned, certifying the Numbers voting in the Affirmative, and the Numbers voting in the Negative, on said Question.

Sent up for Concurrence,

JOHN PICKERING, *Speaker.*

In COUNCIL, February 20, 1779.

Read and concurred,

JOHN AVERY, *Dep. Sec'y.*

Consented to by the Major Part of the Council.

A true Copy,

Attest,

JOHN AVERY, *Dep. Sec'y.*

this time to have a new Constitution or Form of Government made; Secondly, whether they will empower their representatives in the General Court to summon a Constitutional Convention, provided a majority of those present and voting on this question are favorable."

statement is in the *Massachusetts Spy*, October 15, and the same letter states that 129 towns and plantations made no returns.

The voting was done at the regular spring town meetings for electing representatives, at various dates between March 30 and May 1. In columns D and E of the table will be found the vote by counties, in column B the approximate number of towns and plantations in the State at that time from which returns might be expected, and in column C the number of towns making full returns. The totals as found tabulated in the Massachusetts Archives¹ add up to 6612 in favor, 2639 against. The committee appointed by the General Court to tabulate the returns reported to that body on June 3² a different set of figures — 5654 in favor, 2047 against. Probably all the returns were not yet in at the time this report was submitted.

The vote of Essex County, a local convention of which had been largely instrumental in defeating the Constitution of 1778, is surprisingly light and unfavorable. Note the heavy and favorable vote in the three western counties, especially in Berkshire, where the movement for a popular constitution originated. The sum total was about 75 per cent of the total vote for Governor at the first State election, under the Constitution, on September 4, 1780, which is given in column F. As a further basis for comparison, a table of the white population of Massachusetts by counties, in March, 1776, is given in column A.³

The popular vote on the Constitution of 1780 is now being tabulated, and will be submitted at the next meeting.

IV. *Vote of 1795.*

Chapter VI, Article X of the Constitution of 1780 provides that the question of calling a convention to amend the existing Constitution shall be submitted to the qualified voters by the General Court in the year 1795. Accordingly a special election "for taking the sense of the people on the revision of the Con-

¹ Vol. CCXXXIII. ff. 198-207. The actual returns are in vol. CLX. ff. 32-123. Many of the returns were made on the back of the official broadside, and in many cases only the first question was voted on.

² *Journal of the House of Representatives* for 1779, 26.

³ From the Mass. Archives, CCXXXII. f. 99. This is one of the documents, collected for the Archives from some outside source, but evidently of official origin. It is the nearest detailed census figures we have for 1779 and 1780, and is accepted as official in Vol. I. of the State Census for 1905.

stitution"¹ was held on May 6 of that year. A joint committee appointed to examine the returns reported that the whole number of votes were 16,324, of which 7999 were for calling a convention and 8325 against it. "Your committee further Report, that the votes for the several Towns, Districts, and Plantations which have made no return of the Precepts stand thus: 3387 for a Revision, and 2542 against it, and 32 Towns, Districts, and Plantations have made no returns."² This report was read and accepted by the Senate on June 16, 1795, and went into a new draft, which gives the voting by counties as reproduced in columns G and H of the table. This second draft states that the above-mentioned votes of towns, etc., which made no return of the Precepts³ "are included" in the total of 16,324, thus contradicting the first draft. This was undoubtedly an error for "are not included," for the two votes are added together in the margin of the document, in the same handwriting, making a total of 11,386 for calling a convention and 10,867 against it. It appears, then, that a small majority of the voters were in favor of a constitutional revision in 1795. But the Constitution required a two-thirds vote to authorize the General Court to call a new convention.

When this result appeared, the House drafted a resolution to the effect that, since the only opportunity to amend the Constitution was now lost, the people be requested on the first Monday of October to vote for a convention for the express purpose of inserting in the Constitution an article requiring for a popular vote similar to that of 1795, at stated intervals. But the Senate did not concur.⁴

The total vote for Governor at the spring election of 1795 (except for Berkshire returns, which are missing) is given in column I. The ratio of the vote on the constitutional question to the vote for Governor was roughly 125 per cent. There was no contest for the governorship in 1795, but neither was there in 1780.⁵ This vote of 1795 was proportionally the heaviest ever cast by Massachusetts on a constitutional question.

¹ Chapter 62 of 1794.

² Mass. Archives, "Senate Files," 1956.

³ Meaning towns which did not make their returns according to the prescribed form.

⁴ "Senate Files," 1956/1.

⁵ The total vote in 1780 exceeded that of any subsequent election until 1787. The average total vote for 1793-96 was 21,481.

V. *Vote of 1820, Authorizing the Convention of 1820-21.*

By an order of the General Court of June 16, 1820, a special election was held on the third Monday in August to decide the question: "Is it expedient that Delegates should be chosen to meet in Convention for the purpose of revising or altering the Constitution of Government of this Commonwealth?" The ayes and noes at this election are given in columns J and K respectively. In column L is the vote for Governor four months earlier. The ratio is about 34 per cent. The proposed amendments drawn up by the Convention of 1820 were submitted to popular vote in April, 1821, and the tabulation of the vote by counties is in the *Journal of Debates and Proceedings* (1853), 633. The highest total vote on any of them was 30,892, on the second proposition, relative to the change of the legislative year.

VI. *Vote of 1851.*

An act of May 24, 1851, submitted to the qualified voters at the regular State election on November 10 the question: "Is it expedient that delegates should be chosen, to meet in convention for the purpose of revising or altering the constitution of government of this Commonwealth?" A majority vote was to determine the question. The result (columns M and N) was unfavorable to holding a convention at that time.

VII. *Vote of 1852, Authorizing the Convention of 1853.*

The same proposition was renewed in an act of May 7, 1852, and submitted to the voters at the regular State election on November 8. The result is given in columns O and P. The total vote on this question fell slightly short of that of 1851, but was favorable, a shift of a few thousand votes in the four western counties producing the change. It was about 81 per cent of the total vote for Governor at the same election (column Q). The popular vote on the new Constitution submitted by the Convention of 1853 is given in columns R and S.

1853		1916			
Vote on new Constitution. Nov. 14		Shall Const. Conv. be held? Nov. 7		Vote for Governor Nov. 7	
Yea	Nay	Yea	Nay		
R	S	T	U	V	
Essex 998	9,099	26,797	18,145	70,581	
Middlesex 330	12,178	48,086	27,482	112,718	
Southampton 673	9,588	56,281	19,187	105,496	
Northampton 086	6,386	13,450	7,810	32,834	
Plymouth 074	4,327	10,116	5,739	25,523	
Barnstable 294	1,650	1,198	1,183	4,585	
Dukes 405	632	339	283	982	
Bristol 000	4,978	14,681	10,543	40,073	
Worcester 935	7,724	21,734	12,962	61,177	
Hampden 698	2,935	2,898	2,872	10,042	
Franklin 133	2,514	2,106	1,793	7,321	
Hampshire 792	2,978	13,213	9,228	35,594	
Berkshire 785	3,161	6,394	3,832	18,295	
MalDEN					
TOTAL 222	68,150	217,293	120,979	526,421	
Source: Printed Journal of the Con- stitution, p. 541.		Printed Report of Committee of Whole Council, Dec. 6, 1916.		Manual for Gen- eral Court.	

VIII. *Vote of 1916, Authorizing the Convention of 1917.*

Chapter 98 of the General Acts of 1916, "to ascertain and carry out the will of the people relative to the calling and holding of a Constitutional Convention,"¹ placed on the ballot at the State election of November 7, the question: "Shall there be a convention to revise, alter, or amend the constitution of the Commonwealth?" The vote on this question is given in columns T and U. The total is about 64 per cent of the total vote for Governor at the same election, given in column V.

Section 2 of chapter 98 provides that the Convention shall consist of 320 members, 16 to be selected at large, 4 in each of the 16 congressional districts and 240 by the State representative districts. As the number of nominations for delegate-at-large exceeded 48, a primary election for delegates-at-large, the first in the history of the Commonwealth, was held on April 3, 1917, the day that President Wilson's war address was published in the morning newspapers. Each voter voted for 16, and the thirty-two candidates polling the highest vote will go on the ballot at the final election of delegates on May 1. The total vote of the State for the thirty-two highest candidates varied from 83,417 for Charles Francis Adams, to 30,269 for Walter A. Buie.²

Mr. FORD communicated a series of letters on

SUMNER'S ORATION ON THE "TRUE GRANDEUR
OF NATIONS," JULY 4, 1845.

Miss Sara Norton courteously sent to me two letters from Charles Sumner to her grandfather, Rev. Andrews Norton, and expressed her willingness to present them to the Society. As the Sumner Papers are in the Library of Harvard University, I suggested that these letters would find their proper place there and that this Society would be content to print them. To this Miss Norton agreed. In looking for the Norton letters to which Sumner replied I found a series of letters from other correspondents, all bearing upon the oration of July 4, 1845,

¹ Approved April 3, 1916.

² Figures furnished by the Secretary of the Commonwealth.

delivered at the request of the city of Boston. The incidents, pleasant and unpleasant, attending the occasion are related with pious care by Mr. Peirce in his *Memoir and Letters of Charles Sumner*, II. 341 *et seq.*, but only a few extracts from critics and sympathizers are given, hardly sufficient to give the variety of comment called out by the oration. The questions then treated arise periodically, witness Kant's plea for universal peace, John Quincy Adams' instructions on the abolition of private war on the sea and this essay by Sumner. The incidents of that particular day, so different from the usual expressions of celebration, have become historical; but the comments have a modern flavor and possess a lasting interest through the writers. My thanks are due to Harvard University Library for the privilege to use these letters.

FRANCIS BOWEN¹ TO CHARLES SUMNER.

CAMBRIDGE, July 4th, 5 o'clock P. M.

MY DEAR SUMNER, — You have fully proved that Peace, at any rate, hath her *orators*, more eloquent than those of War. Thank you both for the substance and the manner of your discourse, for sound and Christian doctrines uttered in more inspiring tones than were ever shouted on the battle-field; and for the firmness and gallantry with which you proclaimed them amid all the pomp and *paraphernalia* (wrong word that!) of the men at arms just beneath you. Two or three of those bronzed old epauletted seadogs eyed you very grimly as you began to broach your heretical doctrines in their ears; but their countenances gradually relaxed as you went on, and before you closed one of them began to unbutton his waistcoat, as I thought, with quite a sentimental and penitential air, as if he had all his life been doing wrong without knowing it. I went along with you very heartily and cordially in all that you said, only mentally affixing some limitations to your expressed views, to which I think in conversation you would very readily assent. Hating all ultraisms, I only wished you to disclaim utter stark *non-resistance* principles in their widest latitude, which you would probably be willing to do — principles, I mean, which would compel a man to stand stock still on Washington Street, and take a beating from any ruffian that might choose to assail him, or to sit equally passive, and see his wife and child butchered before his eyes by savages.

¹ (1811-1890.) He was Alford Professor of Natural Religion, Moral Philosophy and Civil Polity in Harvard University (1853-1889).



Massachusetts Historical Society

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The movement of Johnston's army on March 9 back to the Rappahannock not only ended the chance, such as it was, of surprising, and beating, it in the race for Richmond by moving down the Chesapeake, but it also was immediately followed by the reduction of McClellan's command of all the armies to that of the Department of the Potomac alone. It remains to notice the instances of his exercise of the former command in fields other than those above mentioned.

T. W. Sherman's expedition of 12,000 men had sailed in October for Port Royal, South Carolina, where it was established upon the reduction of its forts by Du Pont's fleet on November 7.¹ McClellan instructed him, on February 14, 1862,² to lay siege to Fort Pulaski rather than attack Savannah, and otherwise to concentrate his attention on Fernandina and St. Augustine. On February 23³ McClellan also instructed Butler to sail for the Gulf of Mexico and proceed with his expedition of 15,000 to co-operate with the navy in its attack on New Orleans. The relation of these operations to the others embraced in McClellan's plans for all the armies will be considered later.

Mr. MORRISON communicated a paper on

THE STRUGGLE OVER THE ADOPTION OF THE CONSTITUTION
OF MASSACHUSETTS, 1780.

To the *Proceedings* of this Society for November, 1916, Mr. Lord contributed a proposal of the town of Middleborough to nullify and overthrow the Massachusetts constitution of 1780, within four months of the date it had been formally proclaimed the fundamental law of the Commonwealth. To me this document was a complete surprise, as I had always believed that the greatest and most enduring of the revolutionary constitutions had been ratified by the people with substantial unanimity. An inspection of the original returns of the towns on the constitution, in the Massachusetts Archives, revealed a contrary condition of affairs. So numerous, indeed, and interesting were the objections, that I have thought it worth

¹ 6 W. R., 3, 4, 185.

² 5 W. R., 39.

³ *Ib.*, 40; 6 W. R., 699.

while to analyze and classify them, and tabulate the vote. As my research progressed, I was more and more impressed by the high degree of political wisdom possessed by the average citizen of Massachusetts in 1780. A few of the exceptions made to the constitution were fantastic. A considerable class were due to prejudice and inertia rather than to knowledge. But a still more numerous class of objections, particularly those to Article III of the Declaration of Rights, would be recognized as valid by any political scientist today. Many of them, in fact, have since been adopted as amendments to the constitution.

My tabulation of the vote on the two articles most frequently objected to (for the towns voted on the constitution, not as a whole, but clause by clause), made it doubtful whether the requisite two-thirds majority was secured on those questions. That led to an inquiry as to the exact method by which the constitution was ratified. I had always supposed that it was ratified by the people. Several modern authorities on history and government, including at least four of our members past and present, have stated as much in print. But a study of the method actually prescribed by the Convention, and followed, proved otherwise. The method is too complicated to be described by a single formula; but it is not far from the truth to state that the constitution was referred to the people for their consideration and detailed vote, the consent of two-thirds being a prerequisite; but ratified by an adjourned session of the Convention, with a fresh popular mandate. An examination of the Convention's methods of tabulating the popular vote raises the suspicion that the two-thirds majority was manufactured. I leave it to your judgment to decide whether the constitution of Massachusetts, now in force almost 137 years, was ever legally ratified.

I. THE METHOD OF ADOPTING AND RATIFYING THE CONSTITUTION.

1. PRELIMINARY ACTION OF THE LEGISLATURE.

After the draft constitution of February 28, 1778, had been rejected by the people, the General Court resolved to take the sense of the qualified voters on the questions whether they

chose to have a new constitution, and whether they would empower their representatives to call a Convention for the sole purpose of framing one.¹ The vote on both questions being favorable,² the General Court passed a resolve on June 15, 1779, directing the selectmen "of the several Towns and Places within this State" to call a meeting of their respective towns in order to elect as many delegates to the Constitutional Convention as they were entitled to send representatives to the House. It was expressly provided that "every Freeman, Inhabitant of such town, who is twenty-one years of age, shall have the right to vote," although a property qualification was at this time required for voting for representatives. The constitutional Convention, then, rested on a wider electorate than the existing state government. It was elected by, and submitted its work to, the People, in the widest contemporary political sense of that word.

The same resolve recommended the inhabitants "to instruct their respective Delegates" to submit such "Form of a Constitution they may agree upon in Convention" back to the same electorate, assembled in town meetings, "in order to its being considered and approved or disapproved by said Towns and Plantations. And it is also recommended to the several Towns within this State, to instruct their respective Representatives to establish the said Form of a Constitution, as the Constitution and Form of Government of the State of Massachusetts Bay, if, upon a fair examination, it shall appear, that it is approved of by at least two-thirds of those, who are free and twenty-one years of age, belonging to this State, and present in the several town meetings."³

The important thing to be noted here is that the General

¹ *Journal of the Convention for framing a Constitution of Government for the State of Massachusetts Bay, from . . . September 1, 1779, to . . . June 16, 1780.* (Published by order of the Legislature, Boston, 1832), 189. This is the only printed edition of the Journal, the ms. of which is in the Mass. Archives, cclxxvi. The work cited includes an appendix in the legislative resolves calling the Convention into existence, the report of the General Committee of the Convention, the constitution as finally agreed upon by the Convention, and "ratified" by the people, the Convention's address to the people, and the rejected constitution of 1778. This last document has recently been reprinted by the Old South Association as *Old South Leaflet*, No. 209.

² *Supra*, p. 245.

³ *Journal of the Convention*, 5-6.

Court *recommended* a certain mode of ratification, but did not presume to bind the Convention to adopt that particular mode. The Convention derived all its authority from the people, and was not bound in any shape or manner by the existing legislative body of the State.¹

2. THE CONSTITUTIONAL CONVENTION OF 1779-1780.

a. *The First and Second Sessions, September 1-November 12, 1779.*

The Constitutional Convention convened, on September 1, 1779, at the old Meeting House of the First Church in Cambridge, the site of which, in Harvard Square, is now marked by a tablet. The list of members prefixed to the Journal of the Convention contains 293 names, although the highest recorded vote on any question was but 247.² At the first session James Bowdoin was elected President, and Samuel Barrett Secretary of the Convention. On September 4 the Convention appointed a committee of thirty to prepare a constitution to be laid before the whole body and on September 7 adjourned to give the committee time to prepare its report. This General Committee, as is well known, delegated its duties to a sub-committee of three, consisting of Bowdoin and the "brace of Adamses," and that committee left the entire task to John Adams.

The second session of the Convention began on October 28, 1779. Nineteen more members produced their credentials and took their seats. On the afternoon of that day, the General Committee reported the Adams draft, which was forthwith printed.³ The remainder of the session, until November 12,

¹ It even refused to ask the General Court for salaries and mileage. *Journal of the Convention*, 183.

² 34 from Suffolk (including the present Norfolk County), 46 from Essex, 43 from Middlesex, 63 from Worcester, 35 from Hampshire (including the present Hampden and Franklin counties), 16 from Plymouth, 2 from Barnstable, 20 from Bristol, 8 from the Maine counties, and 26 from Berkshire. Very few towns were unrepresented except in Maine, Barnstable, Dukes County, and Nantucket. The two island counties were cut off from the continent by the war, and took no part in framing the constitution; and Maine east of the Penobscot was occupied by the enemy.

³ *The Report of a Constitution or Form of Government for the Commonwealth of Massachusetts: — agreed upon by the Committee to be laid before the Convention of Delegates assembled at Cambridge, on the first day of September A. D. 1779; and continued by adjournment to the twenty-eighth day of October following.* Reprinted

was devoted almost exclusively to the Declaration of Rights, particularly to Article III. John Adams attended up to the last day, but sailed for France on the 13th.¹ Opinions differ on his ability as a diplomatist, a rôle to which he was fitted neither by training nor disposition; but there can be no two opinions regarding his ability as a constitution maker, or the loss that the Commonwealth sustained through his absence from the concluding sessions of the Convention.

b. *Third Session, January 5 (27)–March 2, 1780.*

The third session should have commenced at the Representatives' Chamber in the Old State House, Boston, on January 5, 1780. During the previous session, attendance had fallen off to such an alarming extent that the faithful minority published an advertisement in the newspapers urging a constant and general attendance henceforth, "as the business of the Convention is not of a transient, but permanent nature, and is designed for the benefit of the remotest ages of this Commonwealth, the presence and assistance of the whole body is expected and required; which will have a tendency to remove those local and temporary prejudices and views which might otherwise endanger the acceptance of the best Constitution the Convention can propose."²

But in the meantime the hard winter of 1780 had settled down. Oldest inhabitants said it was the worst since that of 1717, which Cotton Mather has so vividly described; although less elderly inhabitants insisted that they remembered even deeper snow in 1740. Certainly no winter so severe occurred within the next half century. Boston Harbor was frozen up to Nantasket Roads, so that for a month no vessel could enter or leave the port. In the country the cold was so intense that wells and springs froze solid, and the snow lay so deep on the roads that travel was impossible save by snowshoes. On January 20 the Boston-Hartford road was the only one open to travel in the central part of the state, and three months later the snow still covered the fences in some of the western towns.

in the *Journal of the Convention*, 191–215, and, with notes, in the *Works of John Adams*, IV. 219–267.

¹ *Ib.*, I. 297.

² *Journal of the Convention*, 50.

The effect on the Convention was to postpone the real opening of its third session until January 27, when only sixty members were present; and in spite of frequent and vigorous appeals for better attendance, the number of members present and voting never exceeded 82.¹ On this rump of a convention, in which large sections of the state were unrepresented, fell the vital task of amending John Adams' draft into the finished frame of government.²

c. The Method of Ratification adopted by the Convention.

On February 23, 1780, the Convention appointed a committee "to consider and report a suitable time and place to which this Convention shall adjourn . . . in order to obtaining and acting upon the sense of its constituents upon such a Constitution or Frame of Government as may be agreed upon, and sent out to them for their revision, and also to what extent and effect it may act upon the same when obtained."³ This committee reported on February 29 and March 1 and 2 — its first report being accepted, the second recommitted, and the third rejected. The entries in the journal are so involved and contradictory that it is impossible to trace clearly the formation of the final resolve. It is evident, however, that some members wished submission to the people, amendment if need be, an adjourned session of the Convention, and resubmission to the

¹ *Journal of the Convention*, 55-57. Only 47 towns were then represented, 33 of them in Suffolk, Essex and Middlesex counties. The high-recorded vote in the journal was 82, on February 16. It fell off gradually to 36, on the 28th, the last day on which numbers are recorded.

² The journal of this session, from its real commencement, on January 27, 1780, to its end on March 2, occupies 113 pages in the printed edition, as compared with 48 pages for the other three sessions. The appointments to the committees on perfecting and amending various sections were as fairly distributed among the members from various sections of the state as the unequal attendance would allow. John Lowell of Boston served on thirteen committees, and the following on five or more: Samuel Adams, Ellis Gray, and James Sullivan of Boston, John Pickering of Salem, George Cabot of Beverly, Jonathan Jackson of Newburyport, Levi Lincoln, Jr., of Worcester, Timothy Danielson of Brimfield, Robert Treat Paine of Taunton, John Cuming of Concord, and Rev. Samuel West of Dartmouth. Theophilus Parsons apparently did not arrive until February 15, but was immediately appointed to three important committees.

³ *Journal of the Convention*, 135. The committee consisted of James Sullivan, R. T. Paine, General Danielson, Rev. Henry Cummings of Billerica, and Rev. Samuel West.

people. Others suggested a special ratifying convention, similar to the one that acted upon the Federal Constitution in 1788. No one appears to have brought up the precise method recommended by the General Court in its resolve of June 15, 1779.¹ A new and smaller committee, consisting of Sullivan, Lowell, and Paine, completed the work on March 2; and the completed resolves on the mode of ratification, as agreed upon by the Convention and notified to the selectmen of the towns, are as follows:

Resolved, That this Convention be adjourned to the first Wednesday in June next, to meet at Boston; and that Eighteen hundred Copies of the Form of Government which shall be agreed upon be printed; and, including such as shall be ordered to each Member of the Convention, be sent to the Selectmen of each Town and the Committees of each Plantation, under the direction of a Committee to be appointed for the purpose: And that they be requested as soon as may be to lay them before the Inhabitants of their respective Towns and Plantations. And if the major part of the Inhabitants of the said Towns and Plantations disapprove of any particular Part of the same, that they be desired to state their Objections distinctly and the Reasons therefor: And the Selectmen and Committees aforesaid are desired to transmit the same to the Secretary of the Convention on the first Wednesday in June, or if may be, on the last Wednesday in May, in order to his laying the same before a Committee to be appointed for the purpose of examining and arranging them for the revision and consideration of the Convention at the Adjournment; with the Number of Voters in the said Town and Plantation Meetings, on each side of every Question; in order that the said Convention, at the Adjournment, may collect the general sense of their Constituents on the several Parts of the proposed Constitution: And if there doth not appear to be two thirds of their Constituents in favour thereof, that the Convention may alter it in such a manner as that it may be agreeable to the Sentiments of two thirds of the Voters throughout the State.

Resolved, That it be recommended to the Inhabitants of the several Towns and Plantations in this State, to empower their Delegates at the next Session of this Convention, to agree upon a Time when this Form of Government shall take Place, without returning the same again to the People: *Provided* that two thirds of the Male

¹ *Supra*, 355. Note that the resolve in question says "instruct their respective *Representatives*"; i. e., the existing House of Representatives, and not the Convention.

Inhabitants of the Age of twenty one years and upwards, voting in the several Town and Plantation Meetings shall agree to the same, or the Convention shall conform it to the Sentiments of two-thirds of the People as aforesaid.

Resolved, That the Towns and Plantations thro' this State have a Right to choose other Delegates, instead of the present Members, to meet in Convention on the first Wednesday in June next, if they see fit.¹

This complicated mode of ratification may be summarized as follows:

1. Discussion of the constitution by the people in town meeting assembled.
2. Every town meeting to vote on the constitution, clause by clause, and state objections to any article that does not obtain a majority.
3. A new grant of authority by the sovereign people to the adjourned Convention, to
 - (a) tabulate the popular vote on the constitution; and
 - (b) if there appears to be a two-thirds majority for every part, to ratify the constitution and declare it in force; or
 - (c) if there does not appear to be a two-thirds majority, to alter the constitution in accord with the popular will, and ratify it thus amended.

The best brief description of the whole process is on the title-page, here reproduced in facsimile, of the edition of the constitution that was distributed among the several towns.

The Convention was confronted with conditions which made the popular acceptance of any constitution seem almost hopeless. The towns were tenacious of their power, the people jealous of authority, and self-appointed experts on government were scattered throughout the state. At the break-up of royal authority in 1774, the Massachusetts town meetings had acquired many powers that in every well-regulated government are exercised by the central authority. The towns were, in fact, the several sovereigns of Massachusetts-Bay; their relation to the General Court closely approximated that of the states to the Congress of the Confederation, with the important difference that there were not thirteen, but almost three hundred of them.

¹ Page 52 of the edition whose title-page is reproduced in facsimile.

CONSTITUTION

OF

FRAME OF GOVERNMENT.

Agreed upon by the DELEGATES of the People of the State of
MASSACHUSETTS-BAY.

IN

CONVENTION.

Begun and held at *Cambridge* on the First of *September*, 1779,

AND

Continued by Adjournments to the Second of *March*, 1780;

To be submitted to the Revision of their Constituents, in Order
to the completing of the same, in Conformity to their Amend-
ments, at a Session to be held for that Purpose, on the First
Wednesday in *June* next ensuing.

BOSTON: STATE of MASSACHUSETTS-BAY,

Printed by BENJAMIN EDDES & SONS, in State-Street,
MDCCLXXX

They had been carefully consulted in the last few years regarding every step in constitutional development, and many other matters as well. They must be handled with gloves in order to secure their consent to the new constitution. Popular prejudice against authority and political power, by whomsoever exercised, was never stronger than in 1780; the negative theory of natural rights as expounded by Locke was at the back of political thought. And political thought was particularly fecund in revolutionary Massachusetts. The Commonwealth teemed with notions of government. John Adams, writing from Philadelphia in 1776, was "grieved to hear . . . of that rage for innovation which appears in so many wild shapes in our province."¹ The ferment had somewhat subsided by 1780, during the hard realities of war; but the village Hampdens and Sidneys were still a force to be reckoned with.

With these conditions as the background, the purpose of the mode of ratification adopted by the Convention of 1780 becomes clear. An unconditional submission of the constitution "in the lump," as Pittsfield expressed it,² would have brought about certain rejection. The constitution of 1778 had been rejected by a vote of five to one. By giving the people an opportunity to discuss every article and state their objections, the Convention not only flattered its constituents, but supplied a safety valve for the airing of democratic prejudices and notions. The Convention's request for authority to complete and ratify the constitution was rather a large order; but the opportunity to send new delegates to the adjourned session made it more palatable.

By acquiring the power to alter and ratify the constitution, the Convention made sure that its work would not be lost; and by inducing the people to waive their right of a resubmission after alteration, much time would be saved. One detail, however, was clumsily worked out — the provision for altering the constitution "agreeable to the sentiment of two-thirds of the voters," in case there was not a two-thirds majority for the whole draft. If the people voted in the proportion of one yea to two nays, and the nays all made the same objection,

¹ 5 *Collections*, IV. 310.

² J. E. A. Smith, *History of Pittsfield*, I, 367. This instruction of Pittsfield to its delegate suggests the outline of the method of adoption.

well and good. But what if the vote turned out to be in the proportion of three in favor of the constitution, to two against it for various reasons? Here was no two-thirds majority; yet how alter it to suit two-thirds?

II. THE CONSTITUTIONAL CONTROVERSY, MARCH-JUNE, 1780.

I. THE BACKGROUND OF THE STRUGGLE.

The towns had fourteen weeks, from March 2 to June 7, 1780, to discuss and take action upon the constitution. The ordinary printed sources of information suggest that the people took very little interest in their fundamental law. I have been able to find mention of but two pamphlets for or against the constitution. As Mr. Lord has observed,¹ not one of the six newspapers then published in Massachusetts² published the text of the constitution, and the only discussions of it in their columns were a series of controversial articles between two members of the Convention, largely relating to Article III; a few letters from the Rev. Isaac Backus and Dr. William Gordon; and a few reprints of town returns. Not a single newspaper, so far as I can discover, notified its readers when the constitution was ratified.³ No one of the leading politicians carried the controversy outside his own town, and references to the constitution in such political correspondence as we have are exceedingly scanty.

Massachusetts, in fact, had other things to think of. It was perhaps the darkest period of the war. The French alliance had not yet proved its value to the cause. In the summer of 1779 occurred the disastrous Penobscot expedition, which left all Maine east of the Penobscot in the hands of the enemy, and saddled the state with an additional load of debt.⁴ Con-

¹ *Supra*, p. 57.

² The *Boston Gazette*, *Independent Chronicle*, *Continental Journal*, *Independent Ledger*, and *Evening Post*, and the *Worcester Massachusetts Spy*. All these were weekly papers of two to four pages each. The Society has almost complete files for the period mentioned. Judging from the character of the communications they printed, the *Gazette* and *Chronicle* were against the constitution.

³ Yet the *Independent Ledger* devoted one of its four pages in its issue of June 19, 1780, to "A Humorous and Generous Frolic of the late Duke of Montague."

⁴ The total taxes levied by the General Court in 1779 and 1780, were £6,-

gress practically confessed bankruptcy in March. Sir Henry Clinton, completing the conquest of South Carolina, was almost ready to transfer his forces to New York. General Washington, with his army on the Hudson undermined by sickness, desertion¹ and lack of supplies, was writing to the state government every week, begging for its overdue quotas of men, clothing, and money. The Tories were taking heart again, and openly exulting. "Where is the public spirit of the year 1775?" wrote General Paterson from West Point to General Heath at Boston. "Where are those flaming patriots who were ready to sacrifice their lives, their fortunes, their all, for the public?" Lafayette, landing in Boston on April 28, brought the welcome news that Rochambeau's army was on its way, and his own boundless optimism was a promise of better days for the common cause. But there followed the famous Dark Day of May 19, 1780, when the light of the sun was almost completely obscured at noontime. Pious gentlemen quoted Amos viii. 9, and some detected the odor of sulphur and brimstone in the dense smoke from northern forest fires that caused this depressing phenomenon.

2. THE WORK OF THE TOWN MEETINGS.

In this most gloomy spring Massachusetts had known since the Woeful Decade, the people may well have been excused from giving their constitution the attention it deserved. Yet the contents of two bulky volumes in the Massachusetts Archives proved that below the surface, in the primary assemblies of the people, a vigorous, healthy constitutional contest was going on. The returns from the towns, which these volumes contain,² threw a searching light on the mental process, and the

658,567, 17s., 9½d., and £5,706,469, 16s., 7d., of course, figures inflated by being measured in a much depreciated currency.

¹ Col. Thomas Nixon, of the First Massachusetts Brigade under General Washington, issued a proclamation on February 28, 1780, ordering officers and enlisted men of his brigade who had outstayed their leave to return immediately, under pain of being considered deserters. *Independent Ledger*, March 10. On May 5, the General Court passed an act to prevent and punish desertion, and on May 31 General Washington promised by proclamation a pardon to all deserters who would return within three months. *Ib.*, June 19. A broadside was issued by the General Court on June 30, ordering the towns to fill quotas called for the previous October.

² Vols. CCLXXVI and CCLXXVII. These contain returns from 188 towns only.

political theories of the ordinary Yankee citizen of 1780. The Convention had invited the towns and plantations, when the constitution was laid before them, "to state their objections distinctly and the reasons therefor." This invitation was in general accepted with alacrity. Defective in grammar and crude in expression, these returns show a grasp of the fundamental principles of government, an insight into the particular problems of Massachusetts, a critical and constructive faculty, that compare favorably with the work of the famous leaders of revolutionary thought. They anticipated, in fact, most of the amendments that were made to the constitution of Massachusetts during the next seventy-five years.

The returns differ greatly in form and substance. As the Convention furnished no printed form,¹ and no very precise directions, a wide scope was left for local individuality. The length varies from thirty-five words (Marlborough) to a book of twenty-three closely written quarto pages (Northampton). The form varies from a brief acceptance or rejection of the whole constitution, to a neatly tabulated vote on every article, with precise objections to the articles that did not pass.² There was also a great variance in the size of the vote that turned out, and the amount of time consumed. The attendance at the town meetings was apt to dwindle away as the read-

As there is not a single return from Essex, the most wealthy and populous county in the state, and as various indications showed that many other towns made returns which have not been preserved, I have endeavored to obtain copies of the missing records in the town proceedings. A MS. list in vol. CCLXXVII. f. 124, gives the total number of towns and plantations from which returns were expected as 290. This includes the four towns of Dukes County and Nantucket, which were so isolated that they took no part in the constitutional movements of the period; but does not include the Maine towns east of the Penobscot, in territory occupied by the enemy. Accordingly I sent a circular letter, with reply post card, to the clerks of about a hundred towns in Maine and Massachusetts, from which no returns on this question are found in the Archives. At the date of printing, 35 have replied either that there is no reference to action on the constitution in their proceedings, or that their existing records do not cover the year 1780; 32 have furnished copies of their town records on this subject, which will be deposited in the library of the Society. I have personally inspected the records of 4 other towns in Essex County; and in a few cases the requisite data have been found in town histories. In most cases, unfortunately, these transcripts do not fill the lack of original returns, for the town clerks did not always copy the proceedings in full into their own records.

¹ A few towns, however, returned the copy of the printed constitution that had been furnished them, with their votes entered on the margin.

² See the return of Boxford, *infra*, p. 403.

ing of the long document proceeded. "It was late before we Got through it, after Sunsett," wrote the selectmen of Mansfield, "and many persons Gone before this last question was polled, and but 31 that voted. But no Person appeared against it."¹

In Boston, 887 voters turned out, the highest numerically, and almost the highest proportionally, in the state, about one-eleventh of the total population.² The proportion in the other towns varied from one-ninth, in Rehoboth, to one seventy-second in Plymouth, and one one-hundredth in Biddeford, Maine.³ In general, the western counties showed much greater interest than the seaboard counties, and Maine, least of all. The total number present and voting at the most numerous meeting in all the towns that made returns was not far from 16,000, of which less than 500 belonged to Maine. The estimated population of Massachusetts proper in 1780, is 307,000; of Maine, 55,500.⁴

Some towns disposed of the matter in a single meeting, but the majority held two or more sessions on the subject. South Hadley met seven times before it could reach a decision. Boston, after one morning and two afternoon sessions on May 3 and 4, adjourned to the 8th at three P.M., recommending that all shops be closed and business suspended at that hour in order to secure a full attendance, and that the ministers of the Gospel "remind their respective congregations the next Lord's day, of this Adjournment, and of the importance of universally withdrawing themselves a few hours from their ordinary

¹ Mass. Archives, CCLXXVII. f. 39. The vote of Stockbridge town meeting fell off from 117 on the first article of the Declaration of Rights to 17 toward the latter part of the frame of government, and rose again to 26 on Chapter VI, Art. x. *Ib.*, CCLXXVI. f. 21.

² Taking Lemuel Shattuck's computation of 10,000 for the population in 1780, in his City Council Report of 1845, p. 5. But 968 voters turned out to oppose the constitution of 1778.

³ Rehoboth's total vote was 455, Plymouth's 37, and Biddeford's 10. Their population, according to the census of March, 1776, was, respectively, 4191, 2655, and 1006. "We are sorry there are so few met," reads the return of Biddeford, "but think that ought not to dishearten any, but rather to quicken to Zeal and Perseverance those who are desirous of Order, Regularity, and good Subordination." And at the foot of the return is written, "Ten men may save the city."

⁴ Compare the table at the end of this article with column A of the table on p. 248. The estimate of population in 1780 is from *A Century of Population Growth*, 9.

Employments, and directing their Attention to a Matter so deeply interesting to themselves and their Posterity." The meeting on May 8 lasted until dark, and three more sessions were necessary to complete the business.¹

The procedure employed in the greater number of towns. was to read the constitution aloud, to appoint a committee (including generally the town's delegate) to draft amendments to all objectionable articles, and to receive and vote on the report at a subsequent meeting. A division was generally taken upon every article about which a controversy took place, and upon the whole constitution as amended by the town. The Convention expressly did not encourage the towns to subject the whole document to a vote, and few did, save those too indifferent to spend time on a detailed discussion. A notable exception was Pittsfield, whose eighty votes were cast unanimously for the whole constitution in spite of the fact that in several points it contradicted the principles Pittsfield had been putting forward since the beginning of the war, and which the town's delegate in the Convention was expressly instructed to secure. The Rev. Thomas Allen, who signed the return, was the leader of the "Berkshire Constitutionalists," who began the movement for a popular constitution. Berkshire was then in a disorganized state, a veritable *regnum in regno*, "No Constitution, No Law" was the popular cry. The people refused to permit the courts of justice to sit until a constitution was adopted, and the sober conservative element of the population was probably by this time in favor of law and order at any price.²

But only a small minority of the towns that made returns voted on the constitution as a whole. The figures one occasionally meets with, purporting to give the total popular vote for and against the constitution of 1780, are pure fiction.

Most returns were headed, "At a meeting of the freeholders and other inhabitants twenty-one years old and upwards, to take into consideration a Constitution or Form of Government," etc. I have seen no instance in which a town described its return as a ratification. The fact that the Convention, not the people, was to ratify the constitution, seems to have been gen-

¹ *Boston Record Commissioners*, 127-40.

² J. E. A. Smith, *History of Pittsfield*, I., chaps. XVIII-XX.

erally recognized.¹ The tone of all but very few returns was respectful, even deferential. "We hope to be pardon'd," concludes Ward (Auburn), "in thus freely opening our thots in these affairs, as we never had a member in the Convention. Respectfully submitting the matter therefore to the wisdom and candor of that venerable Body, we shall Rejoice to see a happifying Establishment of Government completed as soon as may be."²

The few towns that were not respectful, and which disagreed with pretty much everything in the constitution, seem to have been infected by the general otherwise-mindedness of our sister commonwealth. Bellingham and Medway, which had maintained a peculiar attitude on constitutional questions throughout the Revolution,³ belong to this class, and Freetown, Rehoboth, and Swansea; all on or near the Rhode Island boundary.

3. THE QUESTION OF CHURCH AND STATE — DECLARATION OF RIGHTS, ARTICLE III.

Article III of the Declaration of Rights, which virtually established Congregationalism as the state religion of Massachusetts, produced more discussion and opposition than any other part of the constitution. This article was not the work of John Adams, although he seems to have approved it. Its original form in the report of the General Committee was due to another member.⁴ In the Convention it was more largely debated than any other article. The rule against a member speaking more than twice on the same question was suspended. "A free and general debate ensued," in the course of which the ancient atrocities of the German Anabaptists were raked up against the Baptist advocates of religious liberty, who retorted by comparing religious taxation to a certain practice of the sons of Eli.⁵

The article was then committed to two future governors of

¹ Cf. language of Bowdoin in 2 *Proceedings*, VIII. 290.

² Mass. Archives, CCLXXVII. f. 116.

³ Harry A. Cushing, *Transition*, 200, *et passim*.

⁴ He attended the Convention up to and including the day it was adopted (November 10, 1779), and has left no record of his disapproval. *Works of John Adams*, IV. 222-25.

⁵ *Independent Chronicle*, December 2, 1779.

the Commonwealth (Samuel Adams and Caleb Strong), a future Judge (Robert Treat Paine), and Chief Justice (Theophilus Parsons), of the Supreme Court, one of the leading patriots of Western Massachusetts (Timothy Danielson), the minister of the Second Congregational Church in Medway (Rev. David Sanford),¹ and the minister of the First Baptist Church in Bellingham (Rev. Noah Alden).² The report of this committee was amended and adopted by the Convention on November 10, 1779, as Article III of the Declaration of Rights. It reads as follows, in the first edition of the constitution which was distributed to the towns:³

III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expence, for the institution of the public worship of God, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

AND the people of this Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

PROVIDED notwithstanding, that the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall, at all

¹ In the list of members at the beginning of the printed Journal, his name is incorrectly given as Daniel Stanford. Cf. E. O. Jameson, *History of Medway*, 124-26.

² *Journal of the Convention*, 40. The first three were devout and intolerant Calvinists; Judge Parsons only joined a church late in life (*Memoir*, by T. Parsons, Jr., 308-11), but identified himself, as attorney and chief justice, with a narrow and illiberal interpretation of Article III.

³ See facsimile, p. 361.

times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

AND all monies paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised.

AND every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another shall ever be established by law.¹

¹ For readers not initiated into the mysteries of New England ecclesiastical law and nomenclature, it may be well to explain some of the phrases of Article III, which had a perfectly definite meaning in 1780, though vague today. A *parish* in Massachusetts was (1) a territorial unit, usually coterminous with the township, though many large townships were divided into two or more parishes, which in this case were often called *precincts*; (2) a corporation consisting of all those who lived within the territorial limits of the parish or precinct, except those who formally joined a Baptist, Episcopal, or other dissenting church. The term *religious society* was applied both to parishes in their corporate sense, and to any other religious corporation. A *Church*, in Massachusetts, meant the body of communicants, or full-fledged church members of a religious society; and was never officially applied to the church edifice, called the *meeting-house*. A *public teacher* of piety, religion, etc., was a modification of the old Puritan term, "teaching elder," meaning, minister of the gospel. He was, by a law of 1692, nominated by the Church and confirmed by the parish; paragraph 3 of Article III was an innovation, and produced such unexpectedly liberal results that it was compared to the cockatrice's egg. Both before and after 1780 a Congregational minister had to be ordained by a council of his colleagues from other towns. In probably a majority of the towns, in 1780, the inhabitants were unaware of any distinction between parish and town, the affairs of both corporations being transacted in town meeting, and entered in the same book.

Massachusetts did not, like South Carolina, prescribe articles of faith in her constitution, or statutory law. The Word "orthodox" (i. e., Calvinist according to the 17th Century Cambridge Platform) and the word "Congregational" are not found in Article III. None the less did it favor the Congregational Churches, which with trifling exceptions were then orthodox, as quasi-official churches of the Commonwealth. This came about, because under the Province laws, every new town was obliged to secure an "able, learned, orthodox" minister, and provide him with a salary and meeting house. Hence every Massachusetts town in 1780 was supposed to have a Congregational church; and where more than one church existed, the Congregational was the oldest. The courts held that every citizen belonged to the oldest religious society in his town or precinct, unless he expressly joined some other (Oakes v. Hill, 10 Pickering, 333); and it was the oldest religious society in every town that received the religious taxes of all save those who expressly joined some recognized dissenting church.

It must be confessed that Article III was reactionary. It not only continued the religious system of the province, but exalted it to fundamental law, out of the reach of ordinary legislative enactment. The Provincial system, which was still in force in 1780, may be described as compulsory support of at least one Congregational Church in every town, by public taxation on all polls and estates, with special exceptions for Baptists, Quakers, and members of the Church of England, under certain conditions.¹ Article III was even less liberal than this system, for instead of exempting members of dissenting sects from religious taxation, it merely gave them the privilege of paying their taxes to their own pastors. Unbelievers, non-church-goers, and dissenting minorities too small to maintain a minister, had to contribute to Congregational worship. The whole article was so loosely worded as to defeat the purpose of the fifth paragraph. Every new denomination that entered the Commonwealth after 1780, notably the Universalists and Methodists, had to wage a long and expensive lawsuit to obtain recognition as a religious sect. Town treasurers refused to give regular dissenting ministers their share of the tax. The courts recognized the general principle that all persons and estates were liable to taxation for the Congregational church in their town, and construed the exemptions so narrowly that a subordination of sects existed in fact.² One may say that the ecclesiastical history of the Commonwealth during the next fifty years amply fulfilled the prophecy of the town of Raynham: "It is our opinion that the Said Third Article in the Bill of Rights ought to be more explicit so that it may be

There was nothing, however, in Article III to prevent a Congregational parish from adopting Unitarian instead of Calvinistic tenets; and so many did so after 1800 that the orthodox members of many ancient churches (sometimes, indeed, the whole *church*) were forced to secede from the *parish* and form a dissenting organization; thereby finding themselves in the unfortunate position originally designed for their opponents. When Chief Justice Parker refused them redress in the great Dedham case of *Baker v. Fales*, great was the wailing and gnashing of teeth.

¹ The Provincial system is described in detail in an admirable monograph by Miss Susan M. Reed, *Church and State in Massachusetts, 1691-1740*. (University of Illinois Studies in Social Sciences, III. No. 4, Urbana, 1914.)

² In *Barnes v. Falmouth*, 6 *Mass. Rep.* 401, C. J. Parsons refused to recognize any minister as legally entitled to receive the taxes of his flock unless he were settled over an incorporated religious society. For the working of the system see Buck, *Mass. Eccl. Law*, esp. chaps. ii and iii, and Hovey, *Backus*, chap. xviii.

Easily understood by all men. If not there will be Danger of Different Societies Quariling and Contending in the Law about their Rights which will Tend to the Destruction of Piety, Religion and Morality and Entirely Subvert the Intention of said Third Article."

"We flatter ourselves," says the Address of the Convention to its constituents, "that while we have considered Morality and the Public Worship of God, as important to the Happiness of Society, we have sufficiently guarded the rights of Conscience from every possible infringement."¹ But many towns which agreed with the first clause of this statement, joined Raynham in dissenting from the second. Article III is "very ambiguously expressed," said Grafton. Andover cast its 181 votes against the article on account of the obscurity of the fourth paragraph.² It "means anything or everything, or really intends nothing," said Middleborough. Dartmouth and Norton wished more explicit assurance that those who support public worship of their own, will not be obliged to pay for any other public teacher. Four hundred and twenty voters in Boston supported an amended article which provided that the religious taxes of whomsoever could not conscientiously attend any ministration in his neighborhood should be applied to the support of the poor.³

But the main opposition to Article III was directed against the principle of compulsory support for a religious establishment. This opposition was led by, though not confined to, the Baptists, who always have been and still are exponents of religious liberty in the widest sense of the word, and the absolute separation of church and state. The leader of the Baptists was the Reverend Isaac Backus, of Middleborough.

This man was one of the most remarkable New Englanders of the Revolutionary period. Born in Norwich, Connecticut, in 1724, he was one of those who took fire when George White-

¹ *Journal of the Convention*, 218. W. C. Webster, in *Annals Am. Acad. Pol. & Soc. Sci.*, ix. 387, notes that "a striking contrast between facts and pretensions" characterized the religious clauses in almost every revolutionary constitution.

² Town Records, ms. It will be understood that all references in the future to town returns will be to vols. CCLXXVI and CCLXXVII of the Mass. Archives, unless a different reference is made.

³ Suggested probably by Article XXXIII of the Maryland Declaration of Rights.

field, "like a live coal from God's own altar," swept through the colonies. In 1748 he became pastor of a Congregational church in Middleborough. Like many of the New Lights converted by Whitefield he turned Baptist; and under his influence Middleborough became the leading Baptist community in Massachusetts, with three churches and 400 members in 1784.¹ In 1772 he was elected Agent, or chief of the Warren Association, the annual meeting of Baptist church delegates in the state. From that time, and until his death in 1806, Backus was the principal exponent in Massachusetts of the separation of Church and State. Hardly a year passed without one or more pamphlets, newspaper communications, or petitions to the General Court on this subject appearing from his pen. He was also prolific in sermons on theological subjects, an industrious itinerant preacher, and the historian of his sect. In 1780, besides leading the attack on Article III of the Constitution, he travelled 1918 miles outside of his parish, preached 248 sermons, and employed what leisure remained on the second volume of his *History of New England, with particular reference to the Denomination of Christians called Baptists*. His memory has been kept green by his own town and sect; but no one of the four principal histories of New England and Massachusetts even mentions the name of this remarkable man, at once a worthy successor of Roger Williams, and a historian who ranks with Belknap and Minot.²

At the beginning of the Revolution the status of Baptists was regulated by a Province law of 1770. This act exempted them from religious taxes upon giving certificates to their town assessors, signed by their minister and three other Baptists, that they regularly and conscientiously attended Baptist worship.³ Though more tolerant than earlier legislation, this act

¹ List of Baptist churches in New England, in Backus, *Church History* (1784 ed.), II. 420. South Brimfield had the second largest number of Baptists in Massachusetts, and Boston was third, with 201 members. A Baptist revival was going on in the spring of 1780, eleven new churches being organized in the state. Cf. Backus's account of Middleborough, in *1 Collections*, III. 151.

² Alvah Hovey, *A Memoir of the Life and Times of the Rev. Isaac Backus*, A. M., Boston, 1858. Rev. Dennis B. Ford, *Historical Discourse on the Dedication of the Backus Monument at North Middleborough*, Boston, 1893. His Diary and Itineraries are preserved in the library of the Backus Historical Society, at Ford Hall, Boston.

³ Hovey, *Backus*, 180.

did nothing to relieve isolated Baptists who could attend no meeting of their denomination, nor did it fully protect against local tyranny and intolerance those who fully complied with the law. Three such were arrested for ministerial taxes in Chelmsford in January, 1773, and confined in Concord jail, although one was infirm, another the sole support of his family, and the third over eighty years old.¹ Some of the more conscientious brethren refused to fill out the exemption certificates required by law, deeming such an act "an implicit acknowledgment of a power assumed by man, which in reality belongs to God."² So Backus and his followers continued to fight for the

¹ Hovey, *Backus*, 183; Backus, *An Appeal to the Public for Religious Liberty, against the Oppression of the Present Day* (Boston, 1773), 42. For other cases of persecution, see Hovey, 184, 197-99, 218-20, and Backus, *Church History*, II. chap. xv.

² Backus, *Government and Liberty Described, and Ecclesiastical Tyranny Exposed* (Boston, 1778), p. 15.

There is a satirical poem on the subject in the *Independent Chronicle*, February 26, 1778:

"Religion should be well supported,
With arms and constables escorted;
Let *human* and *divine* be blended,
And priestly dignity extended.
Let hereticks no more presume,
To fault our *creed*, or read our doom: —

Let *prisons*, *halters*, *tests*, and *axes*,
Secure our Parsons yearly taxes: —
When once they cease to be extorted,
I'm sure the glory is departed.
Shall ev'ry clownish fellow chuse,
What priest he'll hear, what prayer he'll use?
And justify such independence?
And on his neighbours faith pass sentence?
If such refuse to bring the paper,
If *baptist*, *sep'ratist*, or *quaker*,
They quickly shall to prison caper.

Ye *Senators* both *wise* and *great*,
Who guard *religion* and the *state*;
Behold these hereticks increase!
Refuse to pay the goodly fleece,
To constable, to pope or priest.
Certificates they will not bring,
Nor with us pray, nor hear, nor sing,
They will blow in the house of rimmon,
Nor make the least submission — hang 'em;

principle of voluntary support, which had always prevailed by exception in Boston, and was finally adopted by Massachusetts, as well as every state in the Union.¹ He pointed out that the Baptists were being taxed without representation. He appealed to the sense of fairness of the orthodox clergy, who had unanimously denied the right of the British Government to tax New Englanders for the Anglican Church, quoting Chauncy's reply to Chandler: "It does not appear to us that God has entrusted the state with the right to make religious establishments."² But nations at war in defence of political or religious liberty are seldom tolerant to their own minorities. Mr. Backus's arguments were unanswerable, so he was accused of being a Tory.

All efforts to secure religious liberty from the General Court of Massachusetts being unavailing, Isaac Backus visited Philadelphia in September, 1774, in order to enlist the influence of the Continental Congress in behalf of his sect. On October 14 there was a memorable public conference in Carpenters' Hall, Philadelphia, between Backus, supported by a delegation of Rhode Island Baptists and Pennsylvania Quakers, and the Massachusetts delegates to Congress, John and Samuel Adams, Thomas Cushing, and Robert Treat Paine. A memorial of the Massachusetts Baptists, reciting their oppressions,³ was read, and a prominent Philadelphia Quaker remarked that the intolerance of Massachusetts was a bar to the union of the colonies. John Adams, suspecting a pacifist Quaker plot to discredit the radical Bay delegates, attempted to browbeat Mr. Backus, deprecated the Massachusetts establishment as

Teach them to sing the tune pecavi,
Or baste them well with wholesome gravy.
Describe the awful doom before 'em,
And to the mother-church restore 'em,
By malleus haereticorum.

PIERRE DE CASTELNAU.

¹ In his appeal to the General Court of December 2, 1774, Backus concludes: "If any ask what we would have, we answer: only allow us freely to enjoy the religious liberty that they do in Boston, and we ask no more." Hovey, 221. The Boston Churches were supported by assessments on pew owners only. The last clause of the first paragraph of Article III permitted this system to be adopted in any parish that so desired. The first outside Boston to do so was the Second Parish in Worcester, in 1785. Buck, *Mass. Eccl. Law*, 38-39.

² Hovey, 234.

³ *Ib.*, 204.

"a very slender one," and insinuated that all complaints came from enthusiasts and would-be martyrs. He characteristically told the exponents of religious liberty that they might as well expect a change in the solar system as in the ecclesiastical system of Massachusetts. Paine said there was nothing of conscience in the matter, it was only a contending about paying a little money. The conference closed by Adams and his colleagues promising to do what they could for the relief of the Baptists. They evidently considered their promise fulfilled by securing a resolve from the Provincial Congress at Cambridge, on December 9, 1774, inviting the Baptists to lay their grievances before the first regular legislature. Paine and Samuel Adams, it will be remembered, were on the committee that drafted Article III of the Declaration of Rights; and Backus accuses Paine and the other Adams of misrepresenting the purpose of his journey to Philadelphia, in order to discredit the Baptists in the Convention.¹

Joseph Hawley, the only political leader of Revolutionary Massachusetts whose religious views were broad and tolerant, made every effort to get a bill through the General Court to disestablish the Congregational churches, but could not get it to a vote. The old system continued; the constitutional Convention of 1779-80 proposed to make it fundamental law. Isaac Backus lost no time in attacking Article III of the Declaration of Rights. Within a week of its adoption by the Convention he fired the first gun of the campaign, a letter that appeared in the *Independent Chronicle* for December 2, 1779, and in pamphlet form.² In the spring after the Convention had adjourned, he published the only other pamphlet of the campaign; and in September the State Baptist Association issued the broadside petition, here reproduced in facsimile.³

¹ Hovey, chap. xv (based on Backus's diary), and pp. 221-23; Diary of John Adams in his *Works*, II. 397-400; *Independent Chronicle*, December 2, 1779; Backus, *Government and Liberty described*. The Baptist leader believed that Paine spread a report that he really went to Philadelphia in order to prevent a union of the Colonies. As judge of the Court of Common Pleas in 1792, Paine laughed out of court a member of Trinity Church, Lenox, who sought recovery of taxes assessed upon him for building a new meeting house in Pittsfield. *Berkshire Historical Collections*, I. 202.

² *Policy, as well as Honesty, forbids the use of Secular Force in Religious Affairs*. Boston, 1779, 26. Copy in Amer. Antiq. Society.

³ Hovey, 240-41. Backus's own account of the constitutional controversy will be found in his *Church History* (1784), II. 328-33.

To the General Court of the Massachusetts, assembled at Boston, Oct.

1780.

WE whose names are hereunto subscribed, inhabitants of this State, who are twenty-one years of age and above, of various religious denominations, enter our PROTEST against the power claimed in the third article of the declaration of Rights in the new plan of Government now introduced among us,---for the reasons following, viz.

First, Because it asserts a right in the people to give away a power they never had themselves ; for no man has a right to judge for others in religious matters ; yet this article would give the majority of each town and parish the exclusive right of covenanting for the rest with religious teachers and so of excluding the minority from the Liberty of choosing for themselves in that respect.

Second, Because this power is given entirely into the hands of men who vote only by virtue of *money* qualifications ; without any regard to the Church of Christ.

Third, Because said article contradicts itself ; for it promises *equal* protection of all sects, with an exemption from any subordination of one religious denomination to another ; when it is impossible for the majority of any community to govern in any affair, unless the minority are in subordination to them in that affair.

Fourth, Because by this article the civil power is called to judge whether persons can conveniently and conscientiously attend upon any teacher within their reach, and to oblige each one to support such teachers as may be contrary to his conscience ; which is subversive of the unalienable rights of conscience.

Fifth, Because, as the Convention say, " Power without any restraint is tyranny," which they explain as meaning the union of the Legislative, Executive, and Judicial Powers of government in the same hands ; and it is evident that these powers are all united in the Legislature, who by this article are empowered to compel both civil and religious Societies to make, what they shall judge to be, *suitable provision* for religious teachers " in all cases where *such provision* shall not be made voluntarily."

Before this, the controversy had got out of the hands of the Baptist leaders. The publication that seems to have had the greatest influence on the town meetings was a series of articles in the *Independent Chronicle*,¹ by a member of the Convention who signed himself "Philanthropos." The shrapnel of this gentleman's logic did much better execution than the old-fashioned round shots of the Rev. Isaac Backus. Beginning with the opening section of Article III, he pointed out that the Greeks and Romans had maintained very creditable civil governments without the aid of the orthodox "piety, religion and morality" of Massachusetts Bay. Not a clause of the article was left intact when he was through with it. Church and state had often been allied in the past, he pointed out, and the invariable result had been persecution by the civil authorities and spiritual decline. "Some persons will say, 'This writer means to set our churches all a-float.'" The Christian Church was very much afloat for three centuries after Christ, "and, thank God, floated to very good purpose." It was only after Christianity became a state religion that Christians began to persecute. If the New England orthodoxy cannot stand without state aid, the sooner it is set afloat the better.² And, not content with destructive criticism, Philanthropos proclaimed a positive principle of the relation of church and state — the principle that civil government has absolutely no right to intervene in religious affairs, whether by defining orthodoxy, punishing heresy, enforcing attendance at public worship, or taxing the citizens for its support. The following is his proposed substitute for Article III:

All men have a natural and unalienable right to worship Almighty God according to their own conscience and understanding; and no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry contrary to or against his own free will and consent. Nor can any man who acknowledges the being of a God be justly deprived of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship. And that no authority can or ought to be vested in, or assumed by any power whatsoever, that shall in any case interfere with, or in any manner

¹ For March 2, 16, 23, April 6 and 13, 1780, and several later numbers.

² "Philanthropos," No. 5, in *Chronicle*, April 13, 1780.

controul the right of conscience in the free exercise of religious worship." ¹

The arguments of Philanthropos made a wide appeal. They are found in the returns of towns as widely scattered as Boston,² Framingham,³ Gorham (Maine),⁴ Granville,⁵ and New Providence in the northwest corner of the state. They were adopted alike in towns where Baptist influence was strong and in towns where a sufficiently liberal atmosphere prevailed among Congregationalists. At least two towns in Suffolk County, seven in Middlesex, six in Bristol, six in Worcester, and eight in Berkshire distinctly stated that their opposition to Article III was based on their belief that the interference of civil government in religious matters was contrary to the liberty of conscience and the Word of God. It was not until 1833 that enough voters adopted this viewpoint to supersede Article III by Amendment XI to the constitution, providing that religious societies might tax their members only with their express consent. Yet even the Amendment XI did not completely separate church and state in Massachusetts; nor, in the opinion of many, did the Amendment XVIII, forbidding public appropriations for sectarian schools. The time has not yet come when we can call the town of Gorham a false prophet for declaring, in its return of 1780, "It is now in the power of this state, and it may never be again, to prevent spiritual tyranny's taking place amongst us." ⁶

The defenders of compulsory religious taxation were not silent. Philanthropos and Mr. Backus were answered in the press by a member of the Convention who signed himself "Iraeneus." ⁷ He agreed with the member who remarked in the course of the debates, "If there is no law to support religion, farewell meeting-houses, farewell ministers, and farewell all

¹ "Philanthropos," No. 5, in *Chronicle*, April 6, 1780.

² Not by the town, but by the minority of 140 who refused to accept Article III, even as amended by the town committee. This minority protest is printed in the *Boston Gazette*, May 22, 1780.

³ Framingham sent in a copy of this protest, clipped from the *Gazette*, as conveying the objections of its minority.

⁴ *Ib.*, June 12, 1780.

⁵ Printed *infra*.

⁶ *Boston Gazette*, June 12, 1780.

⁷ *Chronicle*, February 10, 1780; *Continental Journal*, March 9, 23, April 6; *Independent Ledger*, April 17, 24, May 1, 8, 22, etc.

religions.”¹ The principles of Philanthropos, he tells us, tend to promote “impiety, irreligion, and licentiousness.” The opposition to Article III in the Convention was confined to “a certain junto, composed of disguised Tories, British emissaries, profane and licentious Deists, avaricious Worldlings, disaffected Sectaries, and furious blind bigots.” Liberty of Conscience, indeed! The principle of voluntary contribution to divine worship would “deprive a respectable part of the people of this state of the privilege of discharging their duty to God in a way that they judge to be most agreeable to his will.”² Many scriptural texts are found to authorize state aid, notably Isaiah xlix. 23: “and kings shall be thy nursing fathers, and their queens thy nursing mothers.” The most reasonable argument in favor of the principle of compulsory support was that of the Boston committee report.³ “Though we are not supporting the Kingdom of Christ, may we not be permitted to assist civil society by an adoption, and by the teaching of the best act of Morals that were ever offered to the World? . . . Suspend all provision for the inculcation of morality, religion and Piety, and confusion and every evil work may be justly dreaded; for it is found that with all the Restraints of Government enforced by Civil Law, the World is far from being as quiet an abode as might be wished.”

Arguments such as these, presumably, influenced the majority of the towns that voted for Article III. And a small group of towns voted against it because it was not strict enough. Abington, Northbridge, and four others objected because the Puritan Sabbath was not embalmed in the constitution. Dunstable found Article III so general “as to give protection to idolatrous worshippers of the Church of Rome”; and eight voters in Brookline wished to return to the system of the seventeenth century, when all dissenters’ estates were taxed for orthodox Congregational worship. Wilmington at first voted to confine liberty of conscience to Calvinists and Arminians, but thought better of it, and finally accepted the article as it stood.

In conclusion, Article III of the Declaration of Rights was

¹ *Independent Ledger*, April 17, and Supplement to *Continental Journal*, March 23.

² *Independent Ledger*, April 11, 1780.

³ *Boston Record Commissioners*, xxvi. 134. Samuel Eliot, William Tudor, and Perez Morton were on this committee.

opposed by three distinct classes of opinion: (1) by those who accepted the principle of state support to the churches, but who wished the equality of sects to be more clearly defined and secured; (2) by those who wished the support of religious worship to be wholly voluntary, as subsequently prescribed by Amendment XI to the constitution; and (3) by a few who desired a greater strictness or narrowness than Article III promised to afford.¹

4. RELIGIOUS QUALIFICATIONS FOR OFFICE.

Closely allied with the relation of church and state was that of the question of religious qualifications for office. Chapter II, section I, Article II of the Frame of Government required that the Governor "shall declare himself to be of the Christian religion." Chapter VI, Article I prescribed a declaration of belief in the Christian religion for persons chosen governor, lieutenant-governor, counsellor, senator, or representative, and every elected or appointed official was required to take an oath of office which included a declaration "that no foreign prince, person, prelate," etc., had "any jurisdiction . . . ecclesiastical, or spiritual, within this Commonwealth." This last oath does not appear in the John Adams draft, and was added by the Convention expressly in order to exclude ultramontane Catholics from office.² A great many towns, however, deemed it insufficient for that purpose; and a very common demand on their part was the addition of the word "Protestant" at some or all places in the constitution when the word "Christian" was mentioned. At least forty towns in Worcester and Hampshire counties voted to have this qualification added in Section I, Article II, or in Chapter VI, Article I, or in both places;³ some even wished the "protection of the law" denied

¹ See *infra*, p. 411, the tabulation of the vote on Article III by counties, and a map of the vote by towns.

² Address of the Convention, *Journal*, 221. Cf. the oaths and tests required by other revolutionary constitutions (*Annals of Am. Acad. Pol. & Soc. Sci.*, IX, 3, 89).

³ I have not tabulated the votes on this question, but suspect that more than a third of the voters were in favor of the governor, at least, being Protestant. There were probably not two hundred Catholics in the state in 1780. The first Roman Catholic governor of Massachusetts was the Hon. David Ignatius Walsh, elected in 1913.

to all but Protestants (Article III, last paragraph). Lexington sent in a long historical argument, with citations from Robertson's *Charles V*, against admitting Catholics to office; and Roxbury voted to have the word "Christian" qualified by "Protestant" wherever it appears in the constitution. "This seems to us necessary to secure the peace and tranquillity of the state, as well as to the promotion of that Religion which our venerable forefathers suffered everything but death, to establish." These Protestant principles of the towns were not justified by subsequent history, for Amendments VI and VII swept all religious tests and qualifications out of the constitution in 1821.

5. OTHER ARTICLES OF THE DECLARATION OF RIGHTS.

There was very little objection from the towns to any other article of the Declaration of Rights except Article XVI, on the freedom of the press, and Article XXIX, on the tenure of judges. John Adams' original draft for Article XVI was badly emasculated by the Convention.¹ Boston town-meeting committed the result to three prominent members of the Convention, John Lowell, Ellis Gray, and Nathaniel Appleton. The substitute they reported was accepted by the town: "The Liberty of Speech and of the Press with respect to Publick men and their Publick Conduct and Publick Measures is essential to the Security of the Freedom of a State, and shall not therefore be restrained in this Commonwealth."² If this substitute had been adopted by the Convention, the state might have been spared some of its political libel suits during the Federalist period.

That part of Article XXIX which adopts the principle of permanent tenure and salary to the judges of the Supreme Judicial Court, was objected to by a number of towns, especially in the western part of the state and the Old Colony. "We don't see that it is any Right or advantage for Officers to be so Independent as there expressed, but a disadvantage," said Sutton. The annual granting or withholding of salaries had been the favorite method of bringing political pressure to bear

¹ *Works of John Adams*, IV. 227.

² *Boston Record Commissioners*, XXVI. 127, 128. Milton, Eastham, Westford, and a few other towns took similar action.

on the judiciary during the Provincial period, and the objectors saw no reason why they should give up this privilege. They also desired that annual, quinquennial, or septennial terms be substituted for tenure during good behavior. Shelburne wished the judges to be appointed annually by the legislature, and Adams, Shutesbury, and Wilbraham voted for annual election by the people. But the dissenters to Article XXIX were in a small minority.

Four or five towns demanded additional articles in the Declaration of Rights, such as continuing the usual method of selecting juries, and guaranteeing the free use of the Bible (Charlton). Petersham proffers the unique criticism that no effectual provision is made against the slave trade. But on the whole, the Declaration of Rights, apart from Article III, was the most popular part of the constitution.

6. SEPARATION OF POWERS, OR LEGISLATIVE SUPREMACY.

It cannot be too often insisted upon that the American people during the Revolution were steeped in the negative political theory of natural rights. The people, the source of all power, must delegate only so much of it as is necessary for the preservation of life, liberty, and property. The tendency of rulers to tyrannize is the greatest danger to guard against. Locke, the colonists' political Bible, encouraged a trust in legislatures rather than executives. "The first and fundamental positive law of all commonwealths is the establishment of the legislative power." "In a constituted commonwealth . . . there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate."¹ So far as Massachusetts was concerned, this theory of legislative supremacy was justified by popular experience. During the Provincial period the House of Representatives had been the bulwark of colonial liberties against the royal executive; and it was only natural to wish to entrust power to a body, every member of which was elected in town meeting and subject to its instructions.

All the earlier revolutionary state constitutions reflected this prejudice in favor of the legislature. From a modern stand-

¹ *Second Treatise of Government*, chaps. xi and xiii.

point the Governor of Massachusetts seems unnecessarily checked and hampered. Yet John Hancock, in 1780, was the most powerful executive official on the continent. Pennsylvania had no governor, and in the other states which had adopted constitutions he was the creature of the legislature, elected by it in all save three, limited by some council or other body as to all his functions, having little appointive power and no veto whatsoever. The comparatively strong and independent position granted the Governor of Massachusetts by the constitution was the result of revolutionary experience with a government of the popular sort.

The practical politicians responsible for the constitution had learned much from the workings of Congress and the provisional state government.¹ Adams, Lowell, and Parsons were still fairly apprehensive of tyranny; but they were much more fearful of unrestrained democracy and anarchy, and most impatient of legislative inefficiency. "Vigor and despatch" was their favorite phrase. Hence, in the Massachusetts constitution, they substituted for legislative supremacy a bicameral legislature, a strong executive, and an independent judiciary, all duly separated and balanced. These fundamental principles were imposed on the Convention by John Adams and the future Essex Junto (Parsons, Lowell, Jackson, and Cabot) with some difficulty;² but the Convention seems to have been thoroughly converted. Its Address to its Constituents was an effort to turn the people at large from their habits of political thought; to persuade others that a separation of powers, and "checks and balances" would not only prevent tyranny, but promote governmental efficiency. The Address is a clear, succinct exposition of the same school of political thought that produced the Essex Result, the Federal Constitution, and the Federalist.

The Address did its work well. There is no doubt that a two-thirds majority was procured for the frame of govern-

¹ Which was practically a unicameral legislature. The House of Representatives elected the Council, which acted as upper house and executive board. The judges and other officials were appointed by joint ballot.

² Harry A. Cushing, *Transition*, 233-35; 235, note 3. The Address has been reprinted, I believe, only once, in the *Journal of the Convention*, 216-21. It was drafted by a committee of seven, of which Samuel Adams, Theophilus Parsons, John Lowell, and James Sullivan were the most prominent members.

ment.¹ But the popular attachment to legislative supremacy, and suspicion of judicial and executive power, frequently crop out in the town returns. Rehoboth wants a government "similar to Hon. Continental Congress"; i. e., the Senate, the Executive, and all but the local officials to be elected by the House. Athol and Warwick work out in detail a scheme similar to the then existing government of Massachusetts: a unicameral legislature to elect a council of sixteen, to exercise most of the powers granted by the constitution to the Governor and Council, except the veto. Middleborough predicts that if the people are not allowed to elect all their officials, they will "groan under a government of the most venal and wretched set of villains." The veto power, to Oakham, smacks of monarchy; and Wilbraham, with unconscious sarcasm, urges "that the Chief Executive ought to be excluded a voice in Legislature as much as the Supreme Judicial Judges." Westhampton points out the danger of letting the Governor appoint the officers of garrisons and of forts where munitions of war will be stored, as well as command the officers he appoints; for "wee may at some time be so unhappy as to have a Governor who may not ame at the Good of the Commonwealth." Pownalborough (Wiscasset, Me.) frankly prefers the existing form of government, "which the country was used to, and answered the Purposes both of internal Government and carrying on the war." Freetown is of the same opinion, and Swansea deems the old Province form "more pleasing to the People in General, and Particular to the Inhabitants of the Town Swanzey."

These demands for a unicameral legislature and plural executive were not due simply to prejudice and inertia, but to a suspicion, which was only too well founded, that the system of checks and balances would be used to defeat the popular will. Whether the old way would have been best after all is questionable; but the town of Newton suggested to the constitutional Convention of 1780 a new way, which will be the principal issue of the next constitutional Convention — the referendum: "That in case any Act of the General Court, as aforesaid, shall be adjudged by the People to be oppressive or contrary to their Freedom or Privileges, upon the application of the Selectmen of any Seven Towns of the Commonwealth, the Gen-

¹ Except Chapter VI, Article x, which does not properly belong to it.

Amendment procedure 1795

eral Court shall issue Precepts to the several Towns and to the Assessors or Committees of the corporated Plantations, to convene the qualified Voters in their respective Towns and Plantations for the purpose of considering the said Law; — and if it shall appear that a majority of the People so assembled, shall be against the said Law, it shall be no longer in force.”¹

Wilbraham, in the dignified conclusion to its return, sums up the protest of all who clung to legislative supremacy:

“Hon^d Sir, — We have stated our Objections and Given our Reasons. On the Whole, it appears to us that the Constitution in its Present form is Rather too Arbitrary. The People are now contending for Freedom — and we heartily wish they might not only obtain it — but keep it in their own Hands.”

7. THE HOUSE OF REPRESENTATIVES.

No two subjects gave the Convention so much trouble as the basis of representation, and the organization of the House of Representatives. The problem was a three-cornered one; to reconcile the desire of the smallest town to send at least one member, with the right of the largest to have a proportional share, and yet keep the total number within a reasonable limit. Representation down to 1776 was regulated by a law of 1692, which allowed every town to send at least one representative, a town containing 120 voters to send two, and Boston to send four. The protests of the larger towns produced a new act on May 4, 1776, which gave towns an additional representative for every 100 voters over 220. This brought the House up to the unwieldy number of 260, double the largest Provincial House, and far too large for the Old State House.² We manage to get along today with a House of 240 members, although the state has more than ten-fold its population of 1776. The constitution of 1778 attempted to bring down the number by impairing the principle of equality, providing (Article vi) that the mean increasing number entitling a town to more than one representative should itself be increased by twenty for each additional representative. This was properly criticised in a

¹ Mass. Archives, CCLXXVII. f. 22. Offered as an amendment to Chapter I, Section I, Article II.

² Cushing, *Transition*, 203; James Savage, *Constitution of Mass.*, 6.

pamphlet more frequently extolled than read, the Essex Result of 1778,¹ which proposed to substitute a marvellously complicated system of filtering the representation through a series of county conventions, so that the total strength of the House would not exceed 100.²

The system adopted by the Convention of 1779-80 sacrificed size to equality. It differed only from the Act of May 4, 1776, in making ratable polls (freemen over sixteen with certain exemptions) the unit, instead of the number of voters. Every existing town having 150 or less ratable polls may elect one representative, and one more for every 225 additional ratable polls. No new town to be incorporated until it has at least 150.

The population of Massachusetts and the number of towns, especially in Maine, were increasing so fast that this ratio produced a very unwieldy House. As the General Court refused until 1811 to pay salaries to its members, the number was less than it might have been, but unequally distributed. "At one time the local interest, upon which great excitement was felt in Berkshire, which is equal to little more than a twentieth of the state, brings in here four times its just ratio of members, if the residue be counted. Six or eight sessions after, the troops of Bristol outnumber all those West of Middlesex."³ An Act of 1811, paying representatives out of the public treasury, brought the total number the next session over seven hundred, or one for every thousand people. A similar ratio of representatives to population today would give us a House 3700 strong.

It was not hard, then, for the towns to pick flaws in Chapter I, Section III, Article II. Criticism was particularly rife in the west. The favorite objection in Worcester, Hampshire, and Berkshire was the unwieldy size of the House; the favorite remedy, the old system of 1692. Let every town have one member, a limited number two, and Boston four. Towns with two or three hundred souls demanded one quarter the weight

¹ *Result of the Convention of Delegates holden at Ipswich in the County of Essex, who were Deputed to take into consideration the Constitution and Form of Government proposed by the Convention of the State of Massachusetts-Bay.* Newburyport, 1778. It is reprinted in *Memoir of Theophilus Parsons*, 359.

² *Ib.*, 390.

³ *Savage, Constitution of Mass.*, 11.

of Boston, with ten thousand. A few communities were frank enough to reveal what the west really wanted — to fortify the agrarian against the mercantile interests of the seaboard. Greenwich said that “the Landage (*sic*) Intrest have not a Proper Weight,” and Washington, that the inland towns ought to have the same number as the “Marchantile Towns.”

Yet many fair and reasonable amendments were offered by the western towns. Some proposed to reduce the House by adopting a larger mean increasing number, which was done by Amendments XII (1836) and XIII (1840). Others wished to place the burden of representatives’ salaries on the “public chest,” not the towns; which was distinctly permitted by Amendment XXXV (1893). Mendon, Spencer, Sutton, and Bridgewater had the wisdom to suggest the basis of our final solution adopted in 1857 (Amendment XXI) — to divide the whole state into representative districts of equal voting strength.

The west also showed great dissatisfaction with the low quorum (sixty members) prescribed by Chapter I, Section III, Article IX. Boston alone was entitled to sixty representatives in the Eighteen-thirties. Four towns in Worcester County and two in Hampshire proposed the exact figure — 100 members — adopted by Amendment XXI in 1857; while Leverett looked 111 years ahead to Amendment XXXIII, “A majority of the members . . . shall constitute a quorum.”¹

The return of Worcester (printed below) gives the deliberate voice of western Massachusetts on this question of representation. Failure of the Convention to heed their demands, reasonable as well as unreasonable, was one cause of Shays’ Rebellion.

8. THE SENATE AND COUNCIL.

The sections of the constitution on the Senate and Council (Chapter I, Section II, and Chapter II, Section III), were a clumsy compromise between the Province system and the new principle of the separation of powers. Under the Province

¹ The constitution of 1778 also adopted 60 as the quorum for the House. The Essex Result said of this, “We stand amazed, and are sorry that any well disposed Americans were so inattentive to the consequences of such an arrangement.” *Memoir of Theophilus Parsons*, 385.

Charter, the General Court annually chose a Council of 28, which acted both as upper house of the legislature and executive council. The constitution provided that the people should annually elect forty "persons to be councillors and senators." At the first annual session of the General Court, nine of these were elected by the Senate and House on joint ballot to form the Governor's Council;¹ the remainder constituted the Senate. In other words, the legislative functions of the old Provincial Council were assigned to the Senate, the executive functions to the Governor's Council. The forty Senators and Councillors were apportioned among not less than thirteen senatorial districts, in proportion to the state tax paid by each. As the Convention's Address to its Constituents explained, "The House of Representatives is intended as the Representative of the Persons, and the Senate of the property of the Commonwealth."² The Senate of Massachusetts was created in order to protect property against democracy.

The towns which objected to this fundamental principle of our constitution demanded a unicameral legislature. Many that accepted the principle (including at least sixteen towns in Hampshire, and Worcester counties and six or eight elsewhere) insisted that the number of Councillors and Senators was too large. Several proposed the old figure, 28; and Southborough and a few others did not see why the same body could not continue to exercise both its former functions. The object of these remonstrants seems to have been simply to save expense.

9. THE FRANCHISE.

One of the least popular features of the constitution was the property qualification for voters. No man could vote for governor, senator or representative, unless the owner of a freehold estate within the Commonwealth of the annual value

¹ If any Councillor elect refused to serve, as most of them did when party feeling became intense, he could remain in the Senate, and any citizen of the state could be elected Councillor by the General Court to fill the vacancy.

² *Journal of the Convention*, 218. The Essex Result has a long and interesting argument in favor of this principle. "The legislative body should be so constructed, that every law affecting property, shall have the consent of those who hold a majority of the property." *Memoir of Theophilus Parsons*, 376. Amendment XIII (1840) destroyed this system by apportioning the Senators according to population, and abolishing the property qualification for the position.

of three pounds, or any estate of the value of sixty pounds.¹ This qualification was fifty per cent higher than that of the Province Charter. The Convention's Address defended it on the ground that all citizens not so qualified "are either those who live upon a part of a Paternal estate, expecting the Fee thereof, who are just entering into business, or those whose Idleness of Life and profligacy of manners will forever bar them from acquiring and possessing Property . . . men who will pay less regard to the Rights of Property because they have nothing to lose."²

In spite of this gratuitous insult to the unpropertied classes, who had a right to vote on the constitution, the articles in question secured more than a two-thirds majority. An important section of the people formally consented to its own disfranchisement. Only a small minority vigorously dissented. Several towns protested against property qualification for any electorate. Stoughton insisted "The right of election is not only a civil; but it is a natural right, which ought to be considered as a principle corner stone in the foundation for the frame of Government to stand on." The remonstrants differed as to the exact qualification they would substitute. Some wished all resident adult male taxpayers to vote; others would require the selectmen to furnish a certificate of sobriety in life and conversation to prospective voters. Douglas asked that "all rational men above twenty-one years of age should have the privilege of voting for Governor, Senators, and Representatives; otherwise, all men cannot be said to be born free and equal."³

Many towns accepted a propertied electorate for the Governor and Senate, but strenuously opposed a similar qualification for voting for Representatives.⁴ The distinction was apt, for the

¹ Chapter VI, Article III provided that all sums of money mentioned in the Constitution should be computed in silver, at 6s. 8d. per ounce. The currency mentioned was not sterling, but the theoretical standard of the New England colonies, "lawful money," six shillings of which were equivalent to one silver dollar. Three pounds, therefore, equalled ten dollars specie.

² *Journal of the Convention*, 218.

³ Cf. return of Boxford, *infra*, p. 403.

⁴ The rejected constitution of 1778 had the same qualification as that of 1780 for voting for Governor and Senators; but "every male inhabitant of any town in this state, being free and twenty-one years of age, excepting Negroes, Indians and mulattoes, shall be entitled to vote for a Representative." (Article v.) Even the *Essex Result* proposed male suffrage for Representatives.

House was supposed to represent the persons, and the Senate the property of the state; and all men above sixteen years were liable to taxation. The most lengthy and eloquent remonstrance on this subject came from the Northampton town meeting, influenced probably by the liberal genius of Joseph Hawley. Northampton does not "object a word against the owners of property choosing one entire branch of the legislature. . . . But pray, Gentlemen, shall not the polls, the persons of the state, have some weight also . . . ?"¹ The ancient and wealthy town of Dorchester proposed unanimously "That every Person that is free and 21 years of age vote for a Representative, having estate or not." Its argument in favor of this amendment follows:

This Amendment was made upon the strongest Persuasion that the Article as proposed by the Convention, infringes upon the Rights and Liberties of a number of usefull and respectable members of Society; which number we believe is daily increasing and possibly may increase in such proportion that one half the People of this Commonwealth will have no Choice in any Branch of the General Court, and who are at the same time liable (by the 4th Article of Chapter 1st, Section first) to pay such a proportion of the Publick Taxes as they should Judge reasonable; and the members of the said Court being all men of Considerable Property, may be induced to lay too great a proportion on the Polls, and by that means ease their Estates and bring a heavy burden on those who have no power to remove it. And being fully convinced that Taxation and Representation ought to be inseparable, and that the Property and Estates of the People will be sufficiently guarded by the Senate who represent the same, we see no Reason of sufficient weight to Debar any Person Qualified as in the article amended provides, from Voting in Choice of Representatives.

Dorchester's and Northampton's prophecy that a greater proportion of taxation would be placed on the polls, turned out to be correct. The proportion of the state tax raised by poll taxes rose from 30 per cent in 1778 to 40 per cent in 1786 — one of the many acts of injustice that helped bring on Shays' Rebellion.²

¹ Northampton's return on this subject is printed *infra*, p. 408.

² Dr. H. H. Burbank, *The General Property Tax in Mass., 1775-1792* (MS. thesis in Harvard College Library).

A few towns protested against the property qualification for holding the principal elective offices, and the power given the General Court by Chapter VI, Article III, to raise, but not to lower, these qualifications. Petersham insisted that "Riches and Dignity neither make the head wiser nor the heart better. The overgrown Rich we think the most Dangerous to the Liberties of a Free State, and we object against a Discretionary power in the General Court to alter such Qualifications in Future." Groton pointed out that this last power might result in requiring so large a property for a representative that some towns would have no qualified resident to elect.

10. THE JUDICIARY.

A number of towns expressed their dislike of an independent judiciary by voting against Article XXIX of the Declaration of Rights, or by demanding elsewhere that judges be elected by the House of Representatives or the people. Others, especially in the three western counties, directed their objections against various articles in Chapter III. Southwick and four other towns in Hampshire County; Leominster and Douglas in Worcester County; and Barnstable, wished the Justices of the Peace elected by the people.¹ New Braintree and three other Worcester towns, and Pelham and Colrain wished the Justices of the Peace commissioned by the Governor (by the House, said Dudley), on the nomination of the towns. Two or three proposed that sheriffs be similarly elected. Very popular in the west was an amendment to the effect that a Judge of Probate be elected by, and a registry of deeds located in, every town, in order to save the trouble and expense of recording wills and land titles at the county seat. Seventeen towns in the western counties, and at least seven in the rest of the state, made one or both of these demands. They were not new; in 1776 they had provoked John Adams' outburst regarding wild innovations (in the same week that he served on the committee that drafted the Declaration of Independence): "The projects of county assemblies, town registers, and town probates of wills are founded in narrow notions, sordid stinginess, and profound

¹ Pittsfield demanded this as early as December, 1775, and repeated the demand in the instructions to its delegate at the Convention.



VOTE ON ARTICLE III OF THE DECLARATION OF RIGHTS, 1780.

Blank — Towns that voted in favor.

Shaded — Towns that voted against.

● — Baptist Churches in 1780.

☐ — Towns from which no expression of opinion has been obtainable (unorganized in 1780; took no action; records destroyed; return ambiguous or made too late; no return in archives and no information obtainable from town clerk).

ignorance, and tend directly to barbarism.”¹ Ten years later, they were fighting issues in a portion of the state that John Adams represented.

II. AMENDMENT OF THE CONSTITUTION.

No provision for future amendment of the constitution was contained in John Adams' draft. A committee appointed by the Convention² to consider the subject reported, on March 1, in favor of holding a new constitutional convention in 1800. The Convention amended this report by adding the clause, "If it shall appear that a majority of the *whole numbers of the inhabitants* shall be in favor of such a revision." This would have prevented a new convention as effectually as the recall of a Mayor of Boston is prevented today. The attention of Messrs. Sullivan, Paine, Parsons, and Lowell being called to this "joker," they secured a reconsideration, and the article was recommitted to Dr. Jarvis of Boston, Rev. Jason Haven of Dedham, and Judge David Sewall of York. Their report was adopted as Article x of Chapter VI. In the year 1795 the "qualified voters" will consider the question of calling a new convention, which shall be held if two-thirds of those voting are in favor.³

This article received the least favorable vote in the town meetings of any part of the Frame of Government, in spite of its place at the very end of the constitution. Opposition was confined to no particular section. "We think a convention ought to be made certain in the year 1795," said Roxbury, "in order that mistakes and errors which the wisest Bodies of Men are liable to, may be rectified and corrected; and if it should be necessary, that the people might recur to the first principles in a Regular Way, without hazarding a Revolution in the Government." But almost every town had a different amendment to propose. Some wished a convention summoned

¹ 5 *Collections*, IV. 310. Yet these projects prevailed in Connecticut. Every town clerk's office in that colony and state was a registry of deeds, and there were 28 Courts of Probate, which could be held in any one of the towns that composed the district. *Acts and Laws of the State of Connecticut* (1796), 132, 416.

² February 24, 1780; *Journal of the Convention*, 134. Its members were Samuel Adams, Dr. Charles Jarvis, and Walter Spooner of Dartmouth.

³ *Journal of the Convention*, 156, 159, 161, 162; letter of Dr. William Gordon in the *Independent Chronicle*, June 8, 1780.

earlier than 1795; others proposed to take a vote on the question within five, seven, or ten years. Chesterfield wished the town meetings to exercise a power similar to that of the Council of Censors in Vermont; Andover desired the same broad electorate of 1779 and 1780 to vote on the constitutional question in 1795.¹ Bellingham demanded a requirement that every ten years the people should choose delegates to a constitutional convention to meet at Concord on the last Wednesday in September at 10 A.M. Dr. William Gordon, in a letter to the *Independent Chronicle*,² stated that he would favor the constitution, in spite of its defects, were a revision only certain in 1795. The tabulation of the vote on this article suggests that a strong minority of the people agreed with him.

12. MISCELLANEOUS OBJECTIONS.

The main features of the constitution that met with opposition from the towns have been stated. A few others, not so essential, provoked more or less dissent. Seven towns in Berkshire, fourteen in Hampshire, and four elsewhere wished the captains and subalterns of the militia elected by all members of their companies, or by those sixteen years of age and over, instead of simply by the adult members, as prescribed by Chapter II, Section I, Article x. "Youths will be more tractable under officers of their own choice," explained Douglas. The popular demand for such an alteration evidently increased, for it was adopted as Amendment v in 1821. Newburyport and three towns in southwestern Maine (York, Wells, and Biddeford) proposed an amendment in the better direction, that all militia officers be appointed by the Governor, to avoid company politics.³ They also argued in favor of giving the Governor a full veto, as the "sole representative of the whole Commonwealth" against local and special interests.

A Boston committee consisting of John Lowell, Ellis Gray, and Nathaniel Appleton reported, and the town adopted, an amendment to Chapter VI, Article vii, on the writ of Habeas Corpus. In their opinion this safeguard of personal liberty

¹ MS. town records. Scituate, Acton, and Lexington concurred.

² May 4, 1780.

³ Pittsfield had proposed the principle of the popular amendment in December, 1775; the Essex Result was in favor of appointment by the Governor.

should only be suspended in time of war, invasion, or rebellion, and then for no longer than six months.¹ About twenty towns, all of them east of the Connecticut River, followed Boston's suggestion.

Nearly the same number wished ministers of the gospel, and all others exempted from paying the poll tax, included among those disqualified for election to the General Court by Chapter VI, Article III. Westhampton declared, "We humbly conceive that it is no more agreeable to the Scripture for a Minister of the Gospel to become a minister of State than it were for king Uziah to burn incense at the altar. Besides, we might ad that it is not Consistant with freedom and Liberty for a Legislator to lay a tax on us in which he doth not tax him self, which is truly the case with regard to ministers, provided they pay no rates."

Rotation in office is not a principle we expect to find favored by citizens of wealth and substance. Yet Samuel Eliot and William Tudor were members of the Boston committee that proposed a five-year term for the Commissary General, "because it was apprehended that a change or rotation² was necessary in general to the Preservation of Freedom. Persons long in Office are apt to lose that sense of Dependence upon the People, which is essential to keep them within the Line of Duty to the Publick." Several towns followed Boston, as usual; and Middleborough suggested that no one hold office under the constitution for more than three years out of every five.

"No Body of Men has a Rite to Levy any Duty or Excise on the Produce of the Country or Manufactory of the Country Whatsoever," insisted the 38 voters of Washington, Berkshire County, in criticism of a power accorded the General Court in Chapter I, Section I, Article IV. This typical demand of western agrarianism was first suggested in 1780 by Cambridge town meeting.³

¹ *Boston Record Commissioners*, XXVI. 128.

² *Ib.*, 133, state "relation." Obviously a printer's error. Such limitations were usual in the revolutionary state constitutions.

³ Mass. Archives, CCLXXVII. f. 5. Cambridge polled only three more votes than Washington. Worcester, Petersham, Leverett, Tyngham, and Freetown also voted against taxing produce, etc.; and an unpopular excise was one of the prominent complaints in 1786.

John Adams' favorite Chapter V, Section II, on "The Encouragement of Literature, etc.," did not wholly escape criticism. Sutton hoped it did not continue the ancient obligation for towns of a certain size to maintain grammar schools, which have proved "rather a stagnation to the learning of Youth than any preservation of it."

Petersham thought it "too much to give the Corporation of the University at Cambridge a Section of our Constitution. We are of the mind that it might with safety be left to the care of the Legislature and that it may be possible that the Legislature may find it necessary to Curtail that Rich and Growing Corporation lest it should Endanger the Liberties of the Commonwealth." But this corporation continued to grow to such good purpose that a century and a quarter later it acquired about 2000 acres of Petersham — the Harvard Forest. Another town inquired why, if the constitution protects the rights of the citizens, should Harvard College have special attention. West Springfield and Georgetown, Maine, demanded that other than Congregational ministers be elected to the Board of Overseers. New Salem objected to the professors and students being exempt from the poll tax. Bellingham proposed that the treasurer of the corporation publish an annual account of the funds and income of the college. This would have been most embarrassing to the late treasurer of the College, and first Governor of the Commonwealth.

III. THE FOURTH SESSION OF THE CONVENTION.

JUNE 7-16, 1780.

1. THE TABULATION OF RETURNS.

The Constitutional Convention met for its fourth and last session in the meeting-house of the Brattle Street Church in Boston, on June 7, 1780. The journal records that twenty-seven new members took their seats, but no hint is given as to the total strength at this session.

A resolve of the Convention on March 2 had recommended the people to empower their delegates, at this final session, to agree upon a time when the constitution should go into effect, provided two-thirds of those voting accept it; otherwise, to

conform the constitution to the sentiment of two-thirds.¹ This authorization is omitted from perhaps half the town returns; but we may assume that it was given verbally to the other delegates. At any rate, the Convention proceeded at once to appoint a committee "to revise and arrange" the returns.² Whether intentional or not, the choice of the verb *revise* in preference to *canvass* or *tabulate* was well made.

Of the difficulty of correctly tabulating the town returns, varying as they did in form and substance, no one can have a keener appreciation than myself. Many are so obscurely worded as to defy analysis, and much painstaking labor is required to copy all the votes, where the returns are full and clear. One would expect to find a certain number of honest errors. But the committee adopted at the start such principles of counting that a two-thirds majority for every article was assured in advance.³

A number of objecting towns, apparently regarding themselves distinct bodies politic in their relation to the state, passed a vote to the effect that they would accept the constitution without their favorite amendments if two-thirds of the people so voted. Such action was wholly superfluous, being merely a promise to submit to the will of the majority.⁴ The Convention certainly did not contemplate leaving outside the Commonwealth any town whose objections were not incorporated in the constitution. Yet the total number of votes for and against such a resolution, where it was made, were re-

¹ *Supra*, p. 362.

² *Journal of the Convention*, 170. The committee originally consisted of five members, but it was added to during the next few days, as the difficulty of the tabulation developed, until its total strength was 32 or 33. Eight were from Suffolk County, six each from Essex and Middlesex, two each from Hampshire, Worcester, Bristol, Plymouth, and York, and one each from Barnstable and Cumberland. Members from towns which voted against Article III of the Declaration of Rights, and Chapter VI, Article x, were included, though in a minority. George Cabot, Increase Sumner, and James Sullivan were the most prominent members of the committee.

³ Unfortunately none of the more important committee reports alluded to by the journal of this session have been preserved. But in the same volumes with the town returns in the Mass. Archives are the original tabulations of the returns for all counties but two. From these, and from the preliminary report in the printed Journal, p. 172, and the "specimens" given on p. 176, it is possible to deduce the methods adopted by the committee.

⁴ Such a vote was, however, urged by "Philopatrisæ" in the *Boston Gazette*, April 17, 1780.

corded in a separate column of the tabulation,¹ and added in with the total vote in favor of the constitution as it stood.²

Many, perhaps a majority of the towns, took no direct vote on such articles of the constitution as they objected to. After recording its objection, the meeting would appoint a committee to report an amended or substitute article, and vote on that. Obviously the affirmative side at least of such a vote should have been recorded against the original article. If a town voted 59 to 16 in favor of a new Article III, separating church and state, the 59 votes should have been added to those against Article III as it stood. Yet the committee, in some of its county tabulations, maintained one column for the yeas and nays on every article, and a separate column for the yeas and nays on "ditto amended." In other county tabulations these were thrown out altogether, or counted as if they had been taken on the original article.³ The result was, that in computing the vote for a given article the returns of practically all the towns that opposed it were either counted in favor of it

¹ Groton, for instance, voted "that although the amendments proposed by the town appear to them to be of importance, yet as a Revision is soon to take place, this Town agrees that if two thirds of the male Inhabitants of this State qualified to vote on this subject, and who have assembled in Town Meeting including the Inhabitants of this Town voting herefor, shall agree to accept the Form of Government as compiled by the Convention, that in such Case the Convention shall appoint the time and provide measures for carrying the same into full exercise. Passed in the affirmative sixty nine against sixty Two." In the tabulation this vote is entered in a separate column headed "In case amendments do not take place," in which are also entered the votes of all towns approving the whole constitution as it stood. Mass. Archives, CCLXXVII. ff. 14, 123.

² This statement is warranted, I think, by the preliminary report made by the committee on June 8, on the return of 76 towns, not specified. "That in those Returns they find the number of Persons present and voting is 5776; — That the Number in favour [of] the Constitution without Amendments, and of such Constitution as two thirds of the persons voting thro' the State shall agree to, or the Convention shall form agreeably to the Sentiment of two thirds, even though the Amendments proposed should not be obtained, they find to be 4564, — but that several towns have returned their acceptance of the Constitution with certain amendments and have not determined whether they would accept it in case their proposed amendments did not obtain, upon which they desire the opinion of the Convention, whether they may take the sense of those towns from their delegates . . ." The Convention refused this desired permission to the committee. *Journal of the Convention*, 172, 173.

³ In the Hampshire County tabulation, for instance, the votes of South Brimfield, Chesterfield, Hatfield, Monson, Shelburn, Shutesbury, Southwick, Warwick, and West Springfield in favor of an amended Article III, are counted in favor of Article III as it stood.

or not counted at all.¹ No wonder, then, there appeared to be a two-thirds majority in favor of every article.²

2. THE RATIFICATION OF THE CONSTITUTION.

From June 8 to 15 little business was done by the Convention, while the committee was preparing its final report. This was submitted on the morning of the 15th. At the afternoon session the articles of the constitution were read in order, "and the following question put upon each, viz.: Is it your opinion that the people have accepted of this article? Which, upon every individual article, passed in the affirmative by a very great majority."

It was then voted "that the People of the State of Massachusetts Bay have accepted of the Constitution as it stood in the printed form, submitted to their revision by the Resolves of 2nd March last."³

¹ An extract from the specimen schedule submitted on June 12 (*Journal*, 176), will make this method clear:

Counties	In favor if amended		D° if the amend- ments do not obtain		3rd Article Dec. Rights		D° if am'n'd	
	pro	con						
Essex	49		1408	8	922	287	448	26

Harry A. Cushing, *Transition*, 274, says that the committee "were able to report the vote of 5654 for the Constitution, and 2047 against it." No such report was made, and the references Dr. Cushing gives for this statement show that he obtained these figures from the report of a committee of the House of Representatives on the vote on the question of calling a Convention, in the spring of 1779. Cf. *supra*, p. 246. Attention is called to this misstatement in a work otherwise valuable, as it has already misled other authorities.

² In addition, there are mistakes in the official tabulations too numerous to mention. For instance, the column for Chapter VI, Article x, in the Hampshire County tabulation is left blank in the space for the towns of Shutesbury, Greenwich, and Granby, all three of which voted against it. There is also a discrepancy between the number of returns reported and the number found in the Archives. The latter number is 188. This does not include the 15 returns (at least) from Essex County included in the committee's report of June 12, or four out of the five additional returns added on June 14 and 15. Yet the committee report of June 12 states that "174 towns have made returns." Over 200 had done so.

³ Someone connected with the Convention, however, took it upon himself, without any formal action of the Convention authorizing it, to make certain corrections in the printed form submitted to the people, before its publication.

It remained only to determine when and how the constitution should go into effect. A resolve fixing the date as October 25, 1780, and arranging for the first election under the constitution was adopted. An engrossed copy was presented to the existing General Court by a committee of five, and 1800 copies printed in broadside form for distribution throughout the State. On the afternoon of June 16, 1780, after votes of thanks had been tendered President Bowdoin, Secretary Barrett, and the Brattle Street Society, the Convention closed with thanksgiving and prayer.

The writer is aware that at this late date, 137 years after the Convention of 1780, he who brings a charge of dishonesty against the "blessed deliberations of that venerable body" stands on uncertain ground. No such charge, so far as I know, was preferred against it at that time; even by those who, in their bitterness at certain provisions of the constitution, wished to overthrow it; even by the so-called rebels who followed Daniel Shays. The tabulation was done in full view of the Convention, which must have contained many members hostile to certain articles. Yet in view of the methods pursued by the "committee to revise and arrange the returns," in view of the actual returns themselves, it is difficult to avoid the conclusion that there was not a two-thirds majority for at least two articles of the constitution, and that the Convention deliberately juggled the returns in order to make it appear that there was.

The only explanation and excuse I can offer for such a procedure on the part of so respectable a body of men is the imperious necessity that existed for the speedy adoption of constitutional government. Over four years had elapsed since the machinery for securing a new constitution had first been put in motion. The serious situation of the Commonwealth in

In the Archives, CCLXXVI. f. 43, is a copy of the edition distributed to the towns, on the margin of which the town of South Brimfield made its returns. The South Brimfield matter has been erased, and marginal corrections made, all of which are incorporated in the "Revised and Corrected Edition" of the constitution issued in 1780, after the ratification. The changes were confined to corrections of spelling, except that in Article xv of the Declaration of Rights, "Trial by a jury," the "a" has been deleted; and in Chapter VI, Article II, the clause "within this state" is shifted from between "officers" and "viz." to its present position. Cf. the literal copy of the official ms. of the constitution, to be shortly printed for the use of the Convention of 1917.

the spring of 1780, in its political, military, and financial affairs, has already been described. The ship of state was drifting toward dangerous rocks. Only an efficient government, resting on a constitution that appeared to have popular sanction, could secure obedience to the law, a regular collection of taxes, and an honorable participation by Massachusetts in the war she had done so much to create. "Never was a good constitution more needed than at this juncture," wrote Samuel Adams on July 10.¹ Every article received at least a bare majority. No practical politician would cavil at the change of a few thousand votes to make it a two-thirds majority in such a crisis. That the Convention accomplished much good by a little wrong, few students of the Revolution will deny; but its action is one more illustration of the fact that right and wrong in history are not the same as legality and illegality.

The real significance of the struggle over the adoption of the constitution of Massachusetts lies in the conflict of opinion, and the victory of property over democracy that its adoption implied.

Professor Andrew C. McLaughlin, in his presidential address before the American Historical Association in 1914, said: "If I were called upon to select a single fact or enterprise which more nearly than any other single thing embraced the significance of the American Revolution, I should select — not Saratoga or the French alliance, or even the Declaration of Independence — I should choose the formation of the Massachusetts Constitution of 1780, and I should do so because that constitution rested upon the fully developed convention, the greatest institution of government which America has produced, the institution which answered, in itself, the problem of how men could make governments of their own free will . . ." ² One might add, "And also because the plain people of the state, in town meeting assembled, were able to point out the principal flaws that time and experience would find in the constitution drafted by John Adams, and adopted by a Convention that included among its members Samuel Adams, James Bowdoin, Theophilus Parsons, John Lowell, George Cabot, and Robert Treat Paine."

¹ W. V. Wells, *Samuel Adams*, III. 103.

² *American Historical Review*, XX. 264.

State of Massachusetts-Bay.

In CONVENTION, June 16, 1780.

WHEREAS, upon due Examination of the Returns made by the several Towns and Plantations within this State, it appears that more than Two-thirds of the Inhabitants thereof, who have voted on the same have expressed their Approbation of the Form of Government agreed upon by this Convention, and laid before them for their Consideration, in Conformity to a Resolve of the said Convention of the Second Day of March last: **THIS CONVENTION** do hereupon declare the said Form to be **THE CONSTITUTION OF GOVERNMENT** established by and for the Inhabitants of the State of *Massachusetts-Bay*.

And as the said Inhabitants have authorized and empowered this Convention to agree upon a Time when the same shall take Place: In Order that the good People of this State may have the Benefit thereof as soon as conveniently may be,

It is Resolved, That the said Constitution or Frame of Government shall take Place on the last Wednesday in *October* next, and not before, for any Purpose, save only for that of making Elections agreeable to this Resolution.

And the first General Court under the same shall be holden on the said last Wednesday in *October*, at the State-House in *Boston*, at Ten o'Clock in the Forenoon—And in Order thereto, there shall be a Meeting of the Inhabitants of each Town and Plantation in the several Counties within this State, legally warned and held, on the first Monday in *September* next, for the Purpose of electing a Governor, Lieutenant-Governor, and ~~justices for the County of~~ *And there shall also be a Meeting of the Inhabitants of the several Towns within this State, duly warned and held, sometime in October next, and ten Days at the least before the last Wednesday in the same Month, for the Purpose of choosing Representatives to serve in the said General Court.* And the Selectmen are hereby enjoined to call such Meetings, and to preside at the same. And in all Elections, and in making, receiving and examining Returns, and in conducting the whole Business of organizing and establishing the said General Court, the same Rules are to be observed that are prescribed in the Form of Government for making such Elections, and for the constituting the first General Court; saving only the Difference of Times.

And it is further Resolved, That SAMUEL BARRETT, Esq; (Secretary to this Convention) do, on or before the Fifteenth Day of *July* next, cause printed Copies of this Resolution to be sent to the Selectmen of the several Towns, and the Assessors of the several Plantations aforesaid; who are respectively to perform the Duties required by this Resolution, and to make seasonable and regular Returns of the Persons elected to the several Offices herein mentioned; into the Secretary's Office of this State, agreeably to the Rules contained in the Form of Government above referred to.

In the Name, and pursuant to a Resolution of the Convention,

JAMES BOWDOIN, President.

Attest.

SAMUEL BARRETT, Sec'y.

[N. B. The Selectmen and Assessors, in the several Towns and Plantations to whom the above Copies shall be directed, are desired to deliver One to each of their Delegates in the late Convention.]

APPENDIX.

RETURN OF THE TOWN OF BOXFORD, MASSACHUSETTS, ON THE
CONSTITUTION OF 1780.¹

At a Town Meeting held at the Meeting House in the first Parish in Boxford May 16: 1780. Maj^r Perley Representative

Maj^r Asa Perley chosen Moderator

Voted to choose a Committee to take under Consideration the form of Government sent out for the approbation of of the People and to report such Remarks and amendments as to them may appear proper.

Voted that Cap^t Jonathan Foster Cap^t Isaac Adams Cap^t John Robinson D^r William Hale and Thomas Perley Jun^r be a Committee for the above Purpose.

Then the Meeting was adjourned to the 30th Day of May Instant two O Clock afternoon.

May 30th the Town met according to Adjournment the Moderator being absent Cap^t Jonathan Foster was chosen in his Room.

The Committee appointed to consider of the Constitution made their Report as follows.

Boxford May 30: 1780

The Committee appointed to Inspect the Constitution beg leave to inform the Town that as far as we are able according to the Time We have had have endeavoured to Investigate the Constitution and point out the Errors and Shall lay before the Town our Objections and Remarks thereon

1st Objection as to the third Article in the Declaration of Rights is rather Obscure and ambiguous we therefore want some further explanation on said Article before we can accept it.

2nd Objection We object against the free Men of any Town or Plantation being excluded from giving their Votes for the choice of a Representative, while they are subjected to pay their Proportion of State Taxes

¹ Copy from Town Records.

3rd The House of Representatives being intended as the Representative of the People we object against any Free Inhabitant 21 years of age being excluded from giving his Vote in the choice of a Representative

4th We object that the Quorum of the House of Representatives is too small where the House consists of three or four hundred Members and where they are invested with Power to Levie Duties and Excises on all Wares Merchandise and Commodities whatsoever

5th We object the Governour simply acknowledging himself of the Christian Religion is not sufficient that he ought to declare himself a Protestant.

6th We object against the Legislature being invested with Power to alter the Qualifications of any Officer in the State whatever untill this Constitution shall be Revised

7th Objection fifteen years we think too long for this Constitution to stand we think eight years is long enough for the Constitution to stand.

1st Remark or addition that Settled Ministers of the Gospel shall not have a Right to a Seat in the Council Senate or House of Representatives.

2nd Remark that the House of Representatives shall at least once a month lay before their Constituents the several Votes that may be determined by yeas and Naies in said House that the People may be able to Judge who is Friends to their Country and who is not.

3 Remark that the Towns may have Authoety to recall their Representatives at any time when they shall act anything Inamical to the Liberties of this Common Wealth and to choose others to succeed them.

4th Remark that the House of Representatives be subjected to a Trial by Jury for any faillure of their Promises to the People of this Common Wealth.

By order of the Committee Jonathan Foster

After some debate upon the Constitution and Committees Report, the Town proceeded to act on other parts of the Warrant.

Then the Meeting was adjourned to Monday the 5th Day of June next two O Clock in the afternoon

Monday 5th of June 1780 the Town met according to adjournment proceeded to act upon the Constitution — the numbers Voting for

and against each Article being taken by Yeas and Nays are as Follows:

PART THE FIRST			PART THE SECOND the fraim of Government			CHAPTER I SECTION III		
Art.	Yeas.	Nays	Yeas.	Nays.	—	Art.	Yeas	Nays
1	16	—				1	9	
2	13	—				2	—	11
3	3	11				3	12	
4	22					4	4	7
5	14		CHAPTER I			5	11	
6	18		SECTION I			6	5	
7	22		Article Yeas—Nays			7	9	
8	19	—	1	14		8	2	1
9	16		2	15		9	—	18
10	20		3	17		10	7	
11	21		4	2	14	11	11	
12	22							
13	21		CHAPTER I.			CHAPTER II.		
14	13		SECTION II.			SECTION I.		
15	11		Art.	Yeas	Nays	Art.	Yeas	Nays
16	22		1	7	1	1	11	
17	20	—	2	4	3	2	—	15
18	21	—	3	5		3	11	
19	27 ✓	—	4	7		4	6	
20	18		5	5		5	11	
21	17		6	8		6	8	
22	21	—	7	10		7	10	
23	17	—	8	9		8	5	
24	23	—	9	4		9	5	
25	19	—				10	12	
26	21	—				11	6	
27	21	—				12	7	
28	22	—				13	4	
29	15							
30	14	—						
CHAPTER II.			CHAPTER II.			CHAPTER V.		
SECTION II			SECTION IV.			Art.		
Art.	Yeas	Nays	Art.	Yeas	Nays	1	—	
1	5		1	4		2		
2	5		2	2		3		
3	7							
						CHAPTER V.		
						SECTION II.		

PART THE FIRST			PART THE SECOND					
CHAPTER II.			CHAPTER III.			CHAPTER VI.		
SECTION III.			Art.	Yeas	Nays	Art.	Yeas	Nays
Art.	Yeas	Nays	I	4		I	—	
I	3		2	5		2	—	—
2	4		3	4		3	—	—
3	4		4	I		4	—	—
4	5		5	I		5	—	—
5	4		<hr/>			6	—	—
6	4		CHAPTER IV.			7	—	—
7	3		Yeas 8. Nays—			8	—	—
						9		
						IO	O	II
						II	—	—

The Town accepted the Objections and Remarks reported by the Committee and passed the following Votes thereon

Voted to accept of the third Article in the Declaration of Rights when it is explained with proper Amendments

Voted that the Plantations who pay Publick Taxes and such Towns as may hereafter be incorporated haveing less than one hundred and fifty Rateable Poles ought to be allowed the Priveledge of coupling themselves together till their Numbers amount to one hundred and fifty Rateable Poles and then have the Liberty of sending a Representative

Voted that two thirds of the House of Representatives and no less ought to constitute a Quorum for doing Business

Voted that the Constitution ought to be revised upon the expiration of five years from the time of its taking place

Then the Meeting was dissolved

RETURN OF THE TOWN OF GRANVILLE ON ARTICLE III OF THE DECLARATION OF RIGHTS¹

The Objection to the third Article is as follows. The Article Asserts that the People have a Right to invest their Legislature with a Power to interfere in Matters that properly belong to the Christian Church; after the most mature Consideration we are oblig'd to deny that any such Right is or can be invested in the Legislature; because.

1st Christ himself is the only Lord of Conscience & King & Law Giver in his Church. Teachers of Religion are Officers in his

¹ Mass. Archives, CCLXXVI. f. 49.

Kingdom, qualified & sent by him, for whose Maintenance he hath made sufficient Provision, by the Laws which belong to his own Kingdom. Therefore no supplementary Laws of human Legislatures are necessary.

2nd The interference of the Magistrate in Matters that belong to the Christian Church, is, in our View an Incroachment on the Kingly Office of Jesus Christ, who stands in no need of the help of any civil Legislature whatever; consequently is an Affront to him.

3rd The interference of the Civil Magistrate in Matters that belong to Christ & Conscience, ever has been, and ever will be productive of Oppression to Mankind. There could be no persecution if the civil Magistrate did not support the Power & Cruelty of Men of narrow & ambitious Minds.

4th True Religion has evidently declined & been corrupted by the interference of Statesmen & Politicians. Church History proves this to have been the Case from the Days of Constantine down to our own Day.

RETURN OF WORCESTER, ON THE HOUSE OF REPRESENTATIVES ¹

Chapter 1st Section 3^d House of Representatives

Article 1st 50 for the Article 6. Silent upon the Question.

2^d Rejected Unanimously 57 present — for the following Reasons It is calculated for forming a most unwieldy legislative body. In process of time should the probable degree of population take place the house of Representatives will be so numerous that the dispatch of business will be greatly retarded, & such languor in legislation produced as will, in a great measure, defeat the design of the political existence of the Assembly. For it is well known that Great bodies move slowly. If the proposed mode is established there will be a continued Jealousy in the minds of the people: as a very few of the most populous Towns will have it in their power to constitute a Quorum of the house of Representatives, & being near the State house (should the place of Assembly be & continue in the present Capital of the State) their Members can easily & constantly attend, while those at a distance from their local Situation & many other Causes, be unavoidably absent at the opening or close of a Session whereby in a thin house Laws might be passed which would not be calculated for the General Good.

The following Amendment afterwards passed 24 for 21 against it That the mode of Representation should be set & established in the

¹ Mass. Archives, CCLXXVII. ff. 71, 120.

Constitution in the same way as Elections in the now State were practised & had according to Law in the year 1774. & that the two last paragraphs in this Article be & remain as proposed by the Honorable Convention with this Alteration viz. That the Members of the house of Representatives receive their pay & expences out of the publick Treasury as well for their Attendance as their Travel, & this because we apprehend that Each Member of said house is the Representative of the whole State & not meerly of the Corporation by which he is elected.

RETURN OF NORTHAMPTON ON THE FRANCHISE.¹

Will any one stand forth and say, that persons who have been born within the state, and have always lived in it, till they have arrived to the age of twenty one years, perhaps much above that age, and who have always paid their poll tax, ever since they were sixteen years old, and are still rateable, and are rated and pay for their polls, the sum set on each poll, in every rate that is made for defraying either the continental State, or town charges, be the same higher or lower; we say, will any one affirm, that such persons are not citizens of the Commonwealth? Is not the consequence then, if the said paragraph is true, that an association of many individuals, of the State, which without consent totally excludes many such adult male persons, from any participation in the appointment of the legislature, is in fact no constitution, and does not make a body politick? yea, is it not absolutely a void business? As to what may be replied, by way of answer in behalf of infants, that is, persons under the age of twenty one years, we ask leave to refer to what Mr Locke has most judiciously said, on that head, in the sixth chapter of the second book of his treatise of Governments, intituled paternal power; which is much too lengthy to be recited on this occasion, but well deserving to be resorted to. And as to the case of women, of whatever age or condition they may be, we ask leave to refer to what is very sensibly, as well as genteelly said on the subject, in the twenty ninth page of the Essex result.

Dont we know that whenever any mention is made of a tax act, or proposal in the legislature of taxation, it is always spoken of as a tax on polls and estates; that whenever a list is ordered for the purpose of a new valuation, an exact account is directed to be taken of the number of polls above the age of sixteen years in the several towns in this state; and that when the house or their Committee are

¹ Mass. Archives, CCLXXVI. f. 58.

settling a valuation, the first business always is to fix the proportion of a single poll to a thousand pound; and dont we know that the owners of large property, generally, upon such occasions, strive to get the polls share as high as they can; for they are fully sensible, that it is their interest, that the polls share should not be low, for the higher that is, the less will remain on the estates; and they conduct in the cases accordingly. Now do we hear from these poor polls, a single objection, against the persons who are owners of large property, their voting for the members of the house of representatives? they consider that such property-holders have personal interests and concerns as well as the poor day laborer; further, do they object a word against the owners of the property chusing one entire branch of the legislature, exclusive of themselves, to be guardians of such property? they feel and own the force of the argument for property's having great weight in the legislature, because property ever was, and ever will be, the subject of legislation and taxation. But pray Gentlemen, shall not the polls, the persons of the state, have some weight also, who will also always be the subjects of legislation and taxation? Are life, members, and liberty of no value or consideration? Indeed Gentlemen we are shocked at the thought, that the persons of adult men, should, like live stock and dead chattels, be brought to account to augment the capital whereon to draw representatives for particular towns, in the same manner as such chattels are to be brought into the property capitals to augment the number of senators, and when they have been improved and made the most of that may be for that purpose, they should be wholly sunk and discarded not to say like villains but absolutely like brute beasts. Shall these poor adult persons who are always to be taxed as high as our men of property shall prevail to have them set, and their low pittances of day wages, be taken to lighten the burden on property, shall these poor polls who have gone for us into the greatest perils, and undergone infinite fatigues in the present war to rescue us from slavery, and had a great hand, under God, in working out the great salvation in our land, which is, in a great degree wrought out, some of them leaving at home their poor families, to endure the sufferings of hunger and nakedness, shall they now be treated by us like villains and African slaves? God forbid. What have they done to forfeit this right of participating in the choice of one branch of the two branches which are to constitute our legislative, when they are willing that your men of property should enjoy the exclusive right of chusing the first branch? have they forfeited it in the exercise which they have made of this right of participating in the choice of you Gentlemen to your important, very important trust? we hope not, and we hope that you will on further consideration

verify it, that they have not, by giving them a voice in the choice and appointment of that very branch of the legislative, which you yourselves tell us is by you intended, to be the representative of the persons of the Commonwealth, and thereby remove all cause for them to regret their choice of you.

TABLE OF VOTES ON THE CONSTITUTION OF 1780.

All the figures below, save those for Essex County, are compiled from the original returns in the Massachusetts Archives, or from copies of local records furnished by town clerks. The total number voting is obtained from the "number present and voting" at the most numerous meeting held by a town to consider the constitution, where such number is stated in the return. Where it is not, the highest vote of the town on any article of the constitution is used.

In computing the vote on Article III and Chapter VI, Article X, the direct vote taken by a town on that article is used wherever found. When a town voted, not on the original article, but on its own proposed substitute, the affirmative side of such a vote has been added to the negative vote for the article in question; and vice versa. In some cases, however — Boston is an example — the return makes it clear that both *yeas* and *nays* on the town's substitute were opposed to the original article. In such cases, and no others, both sides have been added to the negative column for Article III (or X). Cf. *supra*, p. 399. When a town voted neither on the original article nor on a substitute, but took a vote on the entire constitution, its *yeas* and *nays* on that question are counted for both articles.

It has been found impossible to recover a satisfactory number of the missing returns from Essex County. The figures for the total vote of Essex are obtained from the highest vote for that county listed in specimen county schedule in the *Journal of the Convention*, 176. The figures for Article III are obtained by interpreting this table in the same way as the original returns. The figures for Article X are obtained from such Essex returns as I have been able to reconstitute from the town records.

The table below, then, does not pretend to be absolutely accurate. It is simply the nearest figure we can get for the popular vote from the materials we have.

The map used as the basis of the graphic representation of the vote on Article III is Osgood Carleton's of 1801. Many new townships had been created in the previous twenty years. Dartmouth, for instance, included both New Bedford and Westport

in 1780. The area of a town in 1780 has been followed wherever possible, in indicating its vote of that year.

COUNTIES	Total number voting	Art. III Decl'n Rights		Chap. VI, Art. x	
		Yea	Nay	Yea	Nay
MAINE COUNTIES . .	453	292	155	230	214
ESSEX	2,115	1,144	971	355	251
MIDDLESEX	2,266	1,617	552	944	725
SUFFOLK	2,318	865	1,003	1,234	512
PLYMOUTH	1,246	637	448	577	447
BARNSTABLE	286	193	52	80	153
BRISTOL	1,486	500	892	482	794
WORCESTER	3,064	1,713	1,162	1,157	999
HAMPSHIRE	2,106	1,423	588	859	907
BERKSHIRE	895	501	402	420	219
Total.	16,235	8,885	6,225	6,338	5,221

E. G. PARKER¹ TO C. J. LANMAN.²

[Case of Anthony Burns.]

BOSTON, Tuesday P.M.

[May 30, 1854.]

MY DEAR SIR, — I have just received the Governor's Commission of Conn. I write this line to thank you, to express my regret at not seeing you, and to say that the Commission will be of essential Service to me; that is if I ever live to get through this terrific and unparalleled siege about the Fugitive Slave. Boston is a Barrack. The Court House is a Camp. In the Court Room daily an armed gang of fighting men surround both of the Counsel, myself and my associate, And of course, we ourselves are armed fully.

I appear in the Case solely *professionally*, and without the slightest sympathy for the Fugitive Slave Law, which I hate, but shall support it so long *as it is Law*.

If I supposed it would be thought by you of sufficient consequence, what my position was, in this strange Drama, so likely to be

¹ Edward Griffin Parker (1826-1868) served as captain on the staff of General Butler, and resigned his commission in 1864. He was a junior counsel for the claimant in the Burns case.

² From the collection of Grenville H. Norcross.

twice a Tragedy, I would send you the Daily Advertiser of today, which very clearly defines and defends my relation and attitude in the Case. But I know how entirely unimportant to you, it would seem, and therefore merely again presenting my acknowledgments for your kindness in attending to the Commission, I remain Yr. very humble Serv^t.

EDW. G. PARKER.

P.S. Remember me to the Family if you please.

[ENDORSEMENT.]

MY DEAR SIR, — I enclose a letter from Mr. Parker — and I am very much obliged for your kindness. He is a promising young man — and a very worthy fellow. Truly, etc.

C. J. LANMAN.

HON. L. F. S. FOSTER.

J. A. Rockwell in a conversation with Converse remarked "the friends of Mr. Foster managed very adroitly."

Remarks were made during the meeting by Messrs. GREEN, STORER, WENDELL, STANWOOD, BOWDITCH, and LORD.

VOL. III, No. 1

OCTOBER, 1917

Smith College Studies in History

JOHN SPENCER BASSETT
SIDNEY BRADSHAW FAY

Editors

JOSEPH HAWLEY'S CRITICISM OF THE CONSTITUTION OF MASSACHUSETTS

Edited by MARY CATHERINE CLUNE

NORTHAMPTON, MASS.

Published Quarterly by the
Department of History of Smith College

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EDITORS

THE SMITH COLLEGE STUDIES IN HISTORY is published quarterly, in October, January, April and July, by the Department of History of Smith College. The subscription price is one dollar and a half for the year. Separate numbers may be had for fifty cents (or one dollar for double numbers). Subscriptions and requests for exchanges should be addressed to Professor SIDNEY B. FAY, Northampton, Mass.

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Joseph Hawley's Criticism of the Constitution of Massachusetts

Now that the Commonwealth of Massachusetts is endeavoring to acquire a new constitution in the place of the one which has served so long and well, it may not be amiss to review the criticism of this time-honored document, made by one of the ablest men of this state, one hundred and thirty-seven years ago, when the constitution was offered to the people for adoption or rejection. A friend of Samuel and John Adams, prevented by the infirmities of illness and approaching age from taking an active part in the constitutional convention, nevertheless from his home in the western part of the state, Major Hawley watched with great interest the progress of the convention. When the critical hour came, he regained for a time the mental vigor of his pre-revolutionary days and was as active as anyone in attempting to secure for his native state an instrument to be pointed at with pride throughout the succeeding century. As one of the leading lawyers of the colonies, he added to a familiarity with the views of Locke and the other political theorists of the eighteenth century, which he possessed in common with many of his fellow citizens, a knowledge of English political institutions and the laws of government, unsurpassed in America. In the events leading to the American Revolution, this stalwart champion of the peoples' rights, was the pillar of the Revolutionary party in western Massachusetts. His influence was paramount even in Boston, where for nearly twenty years his voice was heard in the General Court and the Provincial Congress. His proved disinterestedness and unquestioned integrity continued to make him a leader even after he had retired to private life in his native town.

Graduating from Yale in 1742, Hawley devoted himself to the study of law. Almost as soon as he opened his own office he began to take an active part in the affairs of his native town, Northampton. The well known fact that he never advocated any cause unless convinced of its justice, gained for him the respect

and admiration of the whole county. His reputation was so well established, that juries listened to him readily and gave great weight to his assertions. The vigor with which he conducted the defense of some Hampshire County rioters indicted for resisting the Stamp Act, and the severity of his strictures upon the opinions advanced by the Court led to his dismissal from the bar for the remainder of that court session, but they did not lessen the esteem of Chief-Justice Hutchinson for his critic. The high opinion of Hawley expressed throughout Hutchinson's "History" is remarkable, in view of the fact that the Hampshire patriot more than once by his superior knowledge of the law was able to turn the judge's own statements against him and to place him, when governor of the colony, in an awkward position.

The statement made by Hawley in the General Court, in 1766, that he knew not how the Parliament of Great Britain had acquired the right to legislate for us, attracted wide attention. James Otis immediately arose and complimented the speaker; Governor Bernard reported it in his next letter to Lord Shelburne,¹ and Hutchinson referred to it when he addressed the two Houses² (Jan. 6, 1773), as well as in his "History of Massachusetts Bay."³ It was by Hawley's motion, that the pardon and indemnity clause was included in the Compensation Act, so that the same act of the legislature which provided for the compensation of the sufferers in the Stamp Act riots, brought pardon and oblivion to the offenders, which of course, included those Hampshire rioters, the defense of whom had brought about Hawley's disbarment. Hawley and Hutchinson had a further discussion of riots when the Lieutenant-Governor laid before the House a report which he had received concerning a very disorderly and riotous transaction at Gloucester; and a committee, of which Hawley was a member, replied that when riots "arise from oppression, as is frequently the case, a thorough redress of griev-

¹ Dec. 24, 1766.

² Mass. State Papers, 337.

³ III, 264.

ances will remove the cause, and probably, put an end to the complaint."

In 1773 Hawley was elected a member of the committee of correspondence. About the same time he was appointed chairman of the committee to make the House fully possessed of the Franklin letters. It was he who reported to the House, that the gentleman from whom the letters were received, gave his consent to their publication. He was known to Franklin as a staunch supporter of his conduct throughout the whole affair. He was vice-president of the third Provincial Congress as well as chairman of the committee which sat in the recess of the Congress.

Hawley was one of the first to realize that the colonies must fight to gain their independence, but he was extremely desirous that hostilities should not be begun until a successful issue was presented. After Concord and Lexington he could not restrain his impatience with the tardiness of Congress to declare the independence of the colonies. He wrote to Samuel Adams, at Philadelphia, "that the continent will never act compactly and with vigor," that the Tories would never lose hope, or the trade and commerce of the colonies ever have a secure footing until that step was taken.

There appeared in *The Hampshire Gazette*, October 2, 1833, shortly before the amendment of the third article of the Constitution of Massachusetts was submitted to the people, a letter calling attention to the work of Joseph Hawley, from which the following paragraph is taken: "The extraordinary and unequalled influence of Hawley in forming public opinion for the struggle with Great Britain has been generally acknowledged: it is not so well known, that on every topic of discussion, his voice was invariably raised, as in defence of the bereaved and oppressed, so also in favor of everything that could advance civil or religious freedom. He had the true instinct of liberty and while he rejected public honors, was the inflexible and eloquent advocate of the rights of the people."

Shortly before independence was declared Congress recommended the several states to form governments for themselves.

Massachusetts was the first to avail itself of this suggestion and adopted a form of government closely adhering to the letter of its charter, with the council as the legal successor to the executive power of the governor. The next consideration was the legislature's preparation of a constitution. The matter had been voted upon in the town meetings of the autumn of 1776, but the following year it was disavowed by the people. In February, 1779, the legislature asked for the sense of the qualified voters regarding a new constitution and whether they would empower their representatives to call a convention for the sole purpose of framing one. A large majority of the inhabitants of the towns voted in the affirmative on both questions and elected delegates to the convention. It was expressly provided that every freeman twenty-one years of age, should have the right to vote for the delegates, hence as Morison points out, the Constitutional Convention rested on a wider electorate than the existing state government; for a property qualification was at this time required for voting for representatives. At the same time, the resolve of the General Court recommended the inhabitants to instruct their delegates to submit whatever form of government the convention should agree upon, to that same electorate assembled in town meetings, in order that the several towns and plantations might consider and approve or disapprove it. The General Court also recommended the adoption of the Constitution, if upon a fair examination it should appear to be approved by at least two-thirds of the qualified voters present in the town meetings.

In September of the same year the convention met and proceeded to a consideration of a declaration of rights which a committee of thirty was appointed to prepare. On this committee were Bowdoin, president of the convention, John Adams, Samuel Adams, John Lowell, Jonathan Jackson and Caleb Strong, the last named from Northampton, where he had received his legal training in the office of Joseph Hawley. A sub-committee was chosen, who turned the entire task over to John Adams. With the exception of Article III, the bill of rights was the work of one man. Toward the end of October the first committee reported a draft of

the Constitution and on the next day the convention adopted the first article of a declaration of rights. Adjourning on November 2 until January 5, the attendance at the resumed meeting was small owing to the severity of the season. In fact, the real opening was postponed to January 27, when sixty members were present. Finally on March 2, it was resolved first to submit the work of the convention to the voters, with an address which explained the grounds on which their decisions rested. After consideration by the people the returns were asked for the last Wednesday in May, with the number of voters in the several meetings on each side of every question, in order that if the constitution should not appear favorably to two-thirds of their constituents, the convention might alter it to conform to their sentiments. Secondly, it was recommended to the several towns and plantations, to empower their delegates at the next session of the convention, to agree upon a time when this form of government should take effect, without returning the same again to the people, provided that two-thirds of the male inhabitants of the age of twenty-one years and upwards should agree to it, or the convention should make it conform to the sentiments of the said two-thirds. Thirdly, that the towns and plantations had a right to choose other delegates, instead of the present members to meet in convention on the first Wednesday in June. Re-assembling in June, with twenty-seven new members, it was decided that the majority of voters in the town meetings had ratified the constitution and it was therefore adopted. The difficulty of tabulating the returns was made less, says Morison (p. 397) by the adoption of the principle that a two-thirds majority for every article was assured in advance. This same writer suggests that the Constitution of Massachusetts was never legally ratified. His very interesting paper on the Constitution includes a careful study of the returns of the towns and their revision and arrangement.

Hawley's ill-health would not permit him to attend the constitutional convention, but he made many suggestions to the delegates from Northampton, concerning the Constitution, especially the bill of rights. He wrote to Samuel Adams to beg that the conven-

tion take time to do their work well. None but the members, he said, or the people at large, from whom their power was derived, had the power to limit them in time. In view of the fact that at the date of writing this, three months after the opening of the constitutional convention of 1780, only three questions have been considered, that is, the Sectarian Amendment, the Initiative and Referendum and the matter of allowing absentee citizens to vote at elections, and of these only the first has been resolved upon, although it seems likely that all three will be submitted to the people, Hawley's suggestion to the convention of 1779-1780 that they take a year for their work was very sensible. Another proposal of his was that as soon as the constitution was devised, the public should have copies of it and be invited to criticise it. He suggested that the convention adjourn for the time being; in the meantime the members would have time for mature reflection in which errors and defects would present themselves. Conversation with constituents would be profitable. Perhaps valuable newspaper discussions would arise. This was exactly the method of procedure adopted by the convention; so far they followed Hawley's advice, whether consciously or otherwise. It was not because the rest of the letter was less valuable that its suggestions were less fruitful. "There ought not to be any uncertainty in the Diction of the Constitution, every part ought to be clear, precise, certain and not of doubtful construction or interpretation."⁴

When the Constitution and Frame of Government was submitted to the towns of Massachusetts in 1780, for their consideration, no one of them accepted more seriously than Northampton the duty of examining it, clause by clause, and of stating their objections to every article that did not obtain a majority vote in the town meetings, with the reason therefor. Four town meetings were held between April twenty-fourth and May twenty-second, and the last began at nine in the morning and had scarcely ended at sunset. At the first meeting the warrant included two other articles for deliberation, so after the plan was distinctly read in

⁴ Joseph Hawley to Samuel Adams, Nov. 18, 1779.

meeting, Joseph Hawley, Moderator and Selectman, was chosen with six others, carefully and maturely to consider it and to report at the adjourned meeting what they judged proper for the town to act thereon.

Upon consideration of the several alterations which the committee reported, the town voted in favor of the several amendments therein proposed. Apparently the voters acted upon the amendments as a whole and not paragraph by paragraph. The vote was seventy-nine in favor to six in opposition. Major Hawley, Mr. Caleb Strong, and Dr. Shepard were then chosen a committee to incorporate the several amendments into a new draft and report again to the town.⁵

The draft was entrusted to a sub-committee of one, Joseph Hawley, and was so unsatisfactory to his colleagues, that they reported themselves unwilling to lay it before the town. Upon the motion of Hawley that the draft be read and considered, the question was put and passed in the affirmative. The Major seldom failed to carry a motion. It was only necessary for the voters to know that he was sponsor for the draft, in order to give it their hearty support. After the reading, the draft was largely debated until the dinner hour. In the afternoon, further debate resulted in the question being put, whether the town would have the reasons contained in the aforesaid draft, respecting the qualifications of voters for members of the Constitutional Convention, and it also passed in the affirmative. It was the most eloquent appeal, as well as the most lengthy argument on that subject, received by the convention. Next, it was voted that Hawley's reasons offered in favor of the alterations respecting the qualifications of voters for a governor be annexed to the town returns.

The question was then put in the words of the second resolve of the convention and it passed in the affirmative and upon a division it appeared that fifty-seven were for it and twenty-nine against it; a liberal surrender of power to the convention, by one

⁵ Northampton Town Records, Book 3, 125.

of the towns which had come to look upon its own authority as supreme. Among the Hawley papers in the Bancroft Collection, is the draft of the Northampton returns to the Convention, most of it in Hawley's handwriting.⁶ The copy sent to Boston, embodied in twenty-three closely written quarto pages, is in the Massachusetts Archives.⁷

A letter bearing closely upon this subject in that it contains a critical analysis of the second resolve of March second, with a forecast of what was likely to happen if the said resolve was interpreted literally, and pointing out various defects in the bill of rights, is also among the Hawley Papers and is printed herewith. It was addressed to Messrs. Draper and Folsom, at that time the publishers of the *Independent Ledger* at Boston; but it was evidently not printed. Strange to say, the newspapers of the state devoted very little space to the discussion of the constitution, and Hawley's arguments were denied the larger audience he sought for them. It would be hard to say what weight they had with the convention. Nor can we say whether or not the advice of this practical politician was influential in securing the very broad interpretation of the famous second resolve, finally adopted by the convention; or in abolishing slavery by applying the first article of the bill of rights to *all* men. But his considerations on the constitution in the process of making afford an important view of one phase of public opinion of the day and have an interest for all who would study the growth of political ideas in Massachusetts since the beginning of statehood.

Finally, a letter written by Joseph Hawley, October 28, 1780, declining to serve as senator in the state legislature, is here published as a related expression of the author's intensely democratic views. It has recently appeared in the "Proceedings" of the Massachusetts Historical Society, volume 49, 1915-1916, pages 79-81. The original is in the Massachusetts Archives.

⁶ New York Public Library.

⁷ Vol. 276.

THE AMENDMENTS TO THE CONSTITUTION OF MASSACHUSETTS,
SUGGESTED BY THE TOWN OF NORTHAMPTON, JUNE 5, 1790

1. To the Hon^{ble} the Convention for framing a new Constitution of Government for the State of the Massachusetts Bay, to meet at Boston, on the first Wednesday of June next.

In compliance with the proposal of the said Convention which were sitting at Boston on the second day of March last, the inhabitants of the Town of Northampton, Liegemen of the State aboves^d of the age of twenty one years and Upwards in Town Meeting assembled on Monday the 22d day of May A. D., 1780 do humbly object to the several Articles of that frame of Government agreed upon at Boston on the said Second day of March by the s^d convention which was there and then assembled hereinafter specified, and for the reasons hereinafter set down, That is to say, To that part of the Twelfth Article of the Declaration of Rights wherein it is declared that "the Defend^t shall have right to be fully heard in his defence by himself or his council at his election", Because We Conceive that the Defendant ought not only to have his election whether he will make his defence in person or by Council but ought to have his election and be at full liberty in the choice of his Council Provided he shall chuse for his Council No other than some Liegeman of this or or any other of the United States—The time may come when the Supreme Court for the time being may like a former Supreme Court of the Massachusetts Bay take upon them to confine not only ye Def^t but the pl^t to their Bar of admitted and habited Barristers in their choice of Council, We therefore propose that the part of the Article referred to, Should in conformity to the wholesome law or Act of this State, run thus, 'in his defence by himself, or Such other person as he shall procure for his Council, provided Such person be a liegeman of this or any other of the United States.' We also beg leave to Object to the last paragraph of the same Twelfth Article, because we conceive that the s^d paragraph and the last part of the twenty eighth article of the s^d Declaration do militate if they are not directly repugnant. We there-

fore propose that the s^d last paragraph of the s^d Twelfth Article Should be wholly expunged.

We also disapprove of the first exception in the fifteenth Article of the Declaration &c as too loose and uncertain to have a place in a Declaration of Rights which we judge ought in all its parts to be conceived in as precise Clear and certain Terms as language will admit. Besides, if by "Cases in which it has heretofore been otherwise used and practiced," it was intended to exempt from the trial of a Jury all such Matters and causes, as are exempted from such trial by any Statute or Statutes of this State, we exceedingly disapprove of the Substance and intent of the said exception and Specially the whole power and Authority given by our Statutes to Commissioners of Seven [?] and the Council on appeal to them; all which by such an Interpretation of the exception is preferred whole to Such Commissioners, and exempts all such Matters from Jury trial, in great derogation of Common right and the law of the land. And if no more was intended than Issues in law made, by joinders in Demurrer or them and also the Ordinarys or Probate &c Jurisdiction, we conceive that [in] all that should be declared fully and expressly in precise and determinate words and by no Means in such Terms as the s^d exception contains which admit of vast litigation and various pretensions, and will leave it in the power of the Ordinary Legislature, to take away the sacred right of the Subject to Trial by jury in more instances than they would venture to do, if the whole fifteenth article should be dropt, and wholly expunged from the Constitution. As it is therefore subject to great and various exceptions, we shall not presume to propose any correction to that article, but submit it to the Wisdom of the full Convention to provide a Much better Security to the Subjects of this State, of their invaluable right and Privilege of a Trial by a Jury of the vicinage, in all their controversies and Suits concerning property, real and personal, than can be secured to them by that Article in its present dress.

We also judge that the People's right to keep and bear arms, declared in the Seventeenth Article of ye same declaration is not

express^d with that ample and manly openness and latitude which the importance of the right merits—and therefore propose that it should run in this or some such like manner, To wit,

“The People have a right to keep and bear arms, as well, for their Own as the Common defence;” which mode of expression We are of opinion would harmonize much better with the first article than the form of expression used in the s^d 17th article.

We except to the first article of the Chapter intituled the Senate, as Setting the number of that branch too low—We conceive that *forty* Men after Nine or Seven Shall be detached from them to Constitute a Counsell for the Governor will not be a sufficient ballance for the house of Representatives, a Small number of Men altho in no wise dependant are exposed to be born down or worried out by a Great Body of Men Such as the house of Representatives will and ought to be. We therefore propose that the Senate Consist of the Number of Sixty at the least, before ye draught of Counsellors. No one need be apprehensive of any Great charges being caused by an Augmentation of the Number, for they will rarely perhaps never Sit, but when the whole Gen^l Assembly will be sitting—and We See No reason why the Pay of a Senator ought to be more than that of a Representative, they are not to come in the place of the Hebdomadal Counsel of Quondam Governors, It was their Sittings which created an enormous expense to the Government—We have fresh in our mind, that the Commons in ye Long Parliament bore down the house of Lords chiefly by reason of the Lords being much inferior in Number to the Commons, much might be said in favour of even a greater number than Sixty in case the Counsell are to be drafted from that number, but We forbear lest we should be tedious.⁸

As to the qualifications of the Voters for Senators, We are fully of opinion that a freehold in the State of the annual income of three pounds, will attach a man to the State as much at least

⁸ In 1840, provision was made for the separate election of councillors and senators. Forty senators were to be chosen from the former districts and nine councillors by joint ballot from the people at large.

as 200. value in all estate: the case may be that a man may have 200 value of estate and no real estate and personal estate, especially of some sorts is very easily transferred from place to place.

If our opinion of the number of the Senate should meet with Success, It will be thought proper no doubt that the quorum of the Senate contained in the Ninth Article should be augmented to 31 or 27.

We Propose that the Paragraph of the Second Article of the Chapter entitled, House of Representatives, and which respects the power of the house to fine delinquent towns should Stand in the words following, to wit, And the house of Representatives Shall have power from time to time to impose a fine upon any Town in the State, qualified by the Constitution to send a Representative or Representatives to the General Court which shall be guilty of making default of chusing and returning one member at the least to the House of Representatives.

We are clearly of opinion that the fore part of the fifth Article of the Chapter intituled, "Executive Power", ought to be in Substance as follows To wit, The Governor *Shall* during any Session of the General Court adjourn or prorogue the Same to any time and *place* the two houses shall desire; and *Shall* dissolve the s^d General Court on the day Next preceding the last Wednesday in May annually, if the S^d Court shall then be in being; and in the recess of the said court may with the advice of the Council prorogue the same from time to time not exceeding ninety days in the whole in any one recess; and may with the advice of Council call it together sooner than the time to which it may stand adjourned or prorogued if the welfare of the Commonwealth shall require the same.

And as the last paragraph of the s^d fifth article will be surplusage in case ye above amendment should take place, We beg leave to suggest what follows to be provided in its stead, To wit, The Governor shall have power upon the request of *both* houses of Assembly to dissolve the s^d General Court sooner in the year than the day next preceding the last Wednesday in May.

We propose that the Sixth Article of the same chapter should be varied so as to stand thus, In cases of disagreement between the two houses with regard to the necessity, expediency, time or place of adjournment, or prorogation, the Governor with advice of the council shall have a right to adjourn or prorogue the General Court not exceeding ninety days, as he with such advice shall determine the publick good shall require.

We except to the eighth article as defective in not providing and giving express authority to the whole Legislative to enact Pardons and Indemnities before Convictions, We conceive that such Power ought to be expressly saved to them at ye least and therefore propose that this eighth article be alter^d—so as to read as follows To Wit, But pardon before Conviction, except by the Legislature, Shall avail the party &c. Such statute pardons possibly may be salutary in a short time.

We propose that at the end of the second paragraph of the Tenth article of the same chapter these words should be added, to wit, who shall continue in office for a term not exceeding seven years from ye date of their respective commissions. And at the end of the third paragraph of ye same Article the words following should be added, to wit, whose respective commissions shall expire and become void at the end of seven years at furthest from their dates.—The like reasons and several more may be assigned for ye expiration of Military Commissions at the end of seven years as are given in page 39th for ye expiration of ye Commiss^{ns} of Justices—In the section entitled Council & the Manner of Settling Elections &c.—we would propose the following alterations viz—That the Council should consist of but seven Persons, exclusive of the Lt. Governour, and that the Governour with the said Counsellors, or four of them at least shall and may hold and keep a council, &c.—by this alteration expense may be saved and yet the business of the publick well performed—

In the Section entitled Secretary, Treasurer, Commissary &c.—we could wish that the latter part of the first Article (which regards the Treasurer's continuance in office) should be expressed in such manner that the People may understand the reason why

the Treasurer cannot with safety to the Commonwealth hold his office more than five years—

In Chapt. 4th—We would propose the following amendment viz—That the election of delegates to Congress be by the Senate and House of Representatives, each having a negative on the other—The office of the s^d Delegates being of the highest importance, we humbly conceive the greatest deliberation ought to be used in their Choice whereas in the method proposed by the Convention we apprehend the influence of the Senate may be overborne by that of the house. We also beg Leave to propose that in the Place of the 10th Article of Chapt. 6th the following be substituted viz—In Order the more effectually to adhere to the Principles of the Constitution and to correct those violations which by any means may be made therein as well as to form such Alterations as from Experience shall be found necessary, the General Court shall in 1787 issue Precepts or direct them to be issued from the Secretary's office to the several Towns and Plantations to elect Delegates to meet in Convention for the Purpose afores^d—The said Delegates to be chosen in the same manner &c.

As the Constitution will be the Work of uninspired Men we have much Reason to expect there will be defects in it which the Experience of seven years will discover & we therefore humbly conceive there can be no advantage in postponing a Revision of it longer than that time.

We would also propose that the letter s in the Word Laws in the last article of the Constitution be expunged—

Also, We greatly disapprove of the fourth article of the third section of the first Chapter, intituled house of representatives, as materially defective, and as rescinding the natural essential and inalienable right of many persons, inhabitants of this Commonwealth to vote in the choice of a representative, or representatives, for the town in which they are or may be inhabitants; and we beg leave to—propose, that the following addition should be made to the said fourth article, to wit, and also every rateable poll being twenty one years of age, and who shall have been resident in this

Commonwealth, for the space of three years next preceding, and who shall be willing to take such oath of allegiance to the Commonwealth, as the Laws for the time being shall prescribe.

In order to make the *first* article of this chapter, expressly conformable to your elegant address, to your countrymen, and also to make it consistent with the principle of personal equality (which we conceive ought to be attended to, as well as the principle of corporation equality) it ought to run thus, to wit, there shall be in the Legislature of this Commonwealth, a representative of the persons of the people annually elected; and in order to provide for a representation of the Citizens of this Commonwealth founded upon the said principle of personal equality, the said fourth Article ought to contain the above proposed addition, or something tantamount. We are obliged, Gentlemen, to believe that all along in settling the bill of rights, and constructing the frame of Government, the convention had it full in their intention, that the house of representatives should be chosen, and appointed, in such manner as that they should be as properly and truly, a representative of the persons as the Senate of the property of the Commonwealth: We say that we are constrained to such a belief, because the convention themselves have plainly declared the same to have been their intention. And it is impossible for us to admit so black a thought, as to imagine that the convention had an intention, by their address to beguile their constituents into a Supposition, that provision was made in the frame of Government, for a representative of the persons, as well as for the property, of the Commonwealth, when really at the same time they were conscious that it was not so in fact; and that in truth there was not in all the frame of Government, any ground for such a distinction, as is supposed in the address, for however justly and exactly the number of Senators in the frame of Government may be apportioned according to the property of each district, and provision made that they should continue forever hereafter to be so apportioned, yet that can never afford any foundation for the distinction of a representative of the persons, and a representative of the property of the Commonwealth, for altho such a provision will

truly determine the share, or particular part, of any given whole number, which every district into which the whole State may be divided, shall elect and depute, yet nothing can be more clear than that the ground of the distinction between a personal, and a property representation must wholly depend on the qualifications of the electors, and that if there shall be no difference made between the qualifications of the voters for the members of the house of representatives, and for the members of the Senate; but each member of both houses shall be chosen by the same identical persons,—as they must necessarily be, if the voters for the members of both houses are all to have precisely the like qualifications, and no part of the number of ye persons, having the like qualifications are to be excluded, then the distinction aboves^d is wholly out of doors and becomes an absolute nullity. Who would ever imagine, that if all the male persons in the State of the age of twenty one years and of no property should by the Constitution, have as good a right to give their votes for the senators, as the men in ye State, of the best property, and the votes of all the voters should have an equal estimation in determining the election, we say, into whose head would it ever enter to denominate a body so elected, a representative of the property of the Commonwealth, however exactly and minutely the number or share of the whole Senate, which each district should be intitled to elect, might be adjusted to the property of each district, in relation to the property of the whole Commonwealth? but the case is so evident that it would be affrontive to dwell any longer upon it. We must therefor judge that this default of providing for a personal representative in the Legislature, proceeded from inadvertency and forgetfulness, an infirmity which human nature is universally liable to, and we are further obliged to account for this omission, in the Constitution, in the way abovesaid, by an attention to several matters in the declaration of rights, which when carefully reviewed, and considered by the Convention, we persuade ourselves will appear, not to harmonize with the omission, which we are observing upon.

But that we may come home to the enquiry, concerning the justice of excluding such individuals, inhabitants of this State, from voting, not to say from a right to vote in the choice of a representative (for that is impossible), as come within the description, of the proposed addition, to the said fourth article: we beg that a recurrence may be had, to the second paragraph of the preamble to the Declaration of Rights. There we find it declared, "that the body politick (perhaps it might have been more properly said the constitution of the body politick), is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain Laws, for the Common good: it is the duty of the people therefore, in framing a constitution of government, to provide for an equitable mode of making Laws, as well," &c. now can anyone say that the citizens of this State, who are included in the description of the proposed addition, and who do not answer the description of the said fourth article, as it now stands, have ever covenanted, consented and agreed, or will ever covenant, consent and agree with the rest of the people, to be governed by Laws founded on an Article of a constitution, which totally excludes them from any share or voice in appointing the Legislature for the State, or will such persons ever consent and agree, to be governed by Laws which shall be enacted by a Legislature appointed wholly without their participation; or can a Constitution so framed be said to provide for an equitable mode of making Laws, or will anyone stand forth and say, that persons who have been born within the State, and have always lived in it, till they have arrived to the age of twenty one years, perhaps much above that age, and who have always paid their poll tax, ever since they were sixteen years old, and are still rateable, and are rated and pay for their polls, the sum set on each poll, in every rate that is made for defraying either the continental, State or town charges, be the same higher or lower, we say, will anyone affirm, that such persons are not citizens of the Commonwealth: Is not the consequence then (that if the said

paragraph is true) that an association of many individuals, of the State, which without consent totally excludes many such adult male persons, from any participation in the appointment of the legislature is in fact no constitution, and does not make a body polytick—yea is it not absolutely a void business? As to what may be replied, by way of answer, in behalf of infants, that is, persons under the age of twenty one years,—we ask leave to refer to what Mr. Locke has most judiciously said, on that head in the sixth chapter of the second book, of his treatise of Government, intitled, paternal power ;—which is much too lengthy to be recited on this occasion, but well deserving to be resorted to—And as to the case of women, of whatever age, or condition, they may be, we ask leave to refer, to what is very sensibly, as well as genteely, said on the subject, in the twenty ninth page of the Essex result.⁹

We also humbly conceive that the exclusion which we complain of, directly militates and is absolutely repugnant to the genuine sense, of the first article of the declaration of Rights, unless it be true that a majority of any State have a right, without any forfeiture of the minority to deprive them of what the said first article declares, are the natural, essential, and unalienable rights, of all men. By that article all men are declared "to be born free and equal"; this is true only with respect to the right of dominion, and jurisdiction. over one another. The right of enjoying that equality, freedom and liberty, is in the same article, declared unalienable: Very strange it would be, if others should have a right by their superior strength, to take away from any individual,

⁹"The Essex Result," a pamphlet published in 1778 in the county of Essex giving the views of the leading minds on the proper form that should be substituted for the rejected constitution of 1778 and containing eighteen distinct articles setting forth the leading objections to the Constitution proposed. It is reprinted in the appendix to the Memoirs of Chief Justice Parsons by his son. Hawley had in mind the following: "Women, what age soever they are of, are also considered as not having a sufficient acquired discretion; not from a deficiency in their mental powers, but from the natural tenderness and delicacy of their minds, their retired mode of life, and various domestic duties. These concurring, prevent that promiscuous intercourse with the world, which is necessary to qualify them for electors."

which he himself could not alienate, by his own consent and agreement, but this will truly be the case, or the exclusion, which we except to, is directly repugnant to the first article.

If it is true, that all men are naturally equal with respect to a right of dominion, government, and jurisdiction, over each other, that is to say, no one has any degree or spark of such right over another, then it will follow that any given number of such equals will, if they should all live on the earth, for thirty years and no one of them, within that time should be guilty of any crime or fault whereby he should forfeit his native equality, and freedom; and no one of them should consent to come under the power and dominion of one or more of the rest, or alienate his native equality and freedom (and by the way the article¹⁰ declares that he has no right to alienate it), we suppose that at the end of the thirty years, they will all be as equal & free, as they were at the first moment of their existence.

We further suppose that if one hundred of such equal freemen should be at once on the earth together, of what age soever they were, and some one of the hundred, should happen to have an hundred times as much brutal strength, as all the other individuals when singly, or perhaps what is an equivalent thereto, an hundred times as much natural cunning, as any individual of the rest, he would not have any right against the will of any one of his brethren, to assume the exercise of dominion and jurisdiction, over him, however easy it might be for him to do it; and if no one of the hundred would have a right to do so, we suppose that no ten together would have any right to it, and if not ten, then ninety nine of the hundred would not have any right to domination over the remaining hundredth man, for nought to nought gives but nought; the inevitable consequence then is, that if the ninety nine should endeavor to subjugate, and exercise government, over the hundredth man, without his consent, he would have a good right to resist and in case the ninety nine should overcome

¹⁰ It is strange that this article secured more than a two-thirds majority, in spite of the fact that the very men whom it sought to exclude had the right to vote on the constitution. Thus they formally consented to their own disfranchisement.

W. 100 . . . 1

and subdue him, the hundredth man would have a good right at any time, when any lucky moment presented, to do anything that should be necessary, to regain his natural liberty and freedom whereof he had been wrongfully deprived; full as good a right against the ninety nine, as he would have had against any single one of the hundred, who by his superior brutal strength, had usurped upon him.

Now, Gentlemen, in case the form of government which you have sent out to the people shall be affirmed and established, is it not intended that every rateable poll of this State, of the age of twenty one years, shall be obliged to submit, and be subject to such a legislative body as is therein projected and described? Is it not intended that all such persons shall be the subjects of their legislation? and that their persons shall be controllable by the laws of that legislature whether they ever were or shall be the owners of a freehold estate within this State of the annual income of three pounds, or of any estate of the value of sixty pounds or not? Is it not intended that they shall be obliged to contribute to the subsidies, taxes, imposts, or duties which shall be established, fixed, and laid by such a legislative, and be liable to be restrained of their liberty by the acts of such a legislative, for such causes as they shall judge they ought to be, whether they ever were or shall be qualified, as is expressed in the fourth article of the third section of chapter first, intituled "House of representatives," or not? Then will not such persons be in a state of absolute slavery, to such a legislature, while they shall continue without the quantum of property prescribed in the said article? If they are to be subject to the jurisdiction, and legislation, of your legislature with regard to life, liberty, and their day wages or whatever small property they may acquire, and yet have no voice in the appointment of that legislature, what is the difference of their condition from that of the hundredth man who without his consent had jurisdiction usurped over him, by the other ninety nine or any single one of the above mentioned hundred of superior animal Strength or natural cunning?

But perhaps it will be said that this subjugation of these persons unqualified to vote, and consequently excluded by the said fourth article, is done by their own consent, as it is done by the Convention in whose choice they have, or might have had, a vote, and that Mr. Locke tells us, "that the liberty of a man in society is to be under no other legislative power, but such as is established by his consent;" and that the s^d legislative body to be from time to time established, without their participation, will be by their consent, as it has been done by the convention, in the appointment of which body they had a voice, and consequently they were their agents; and, as their agents, have consented to it, it is become the act of the constituents:

We answer that the objection supposes what is not true in fact, to wit, that the Convention have been empowered and authorized to agree upon and establish a model of government for this State; it is certain that the convention have never had such a power given to them, as is evident, if we consider the proposals upon which they were elected, which were, that delegates should be chosen by the several towns in this State, for the sole purpose of devising and agreeing upon a constitution or frame of government to be communicated, and laid before the people, which, if two thirds of the people, capable of voting, to wit, the free-men of the State, of the age of twenty one years, should accept and affirm, it should then, and not till then, be the Constitution of this State, and binding on the whole. And the same is further evident, to wit, that the Convention have no power to establish a constitution for the State, if they themselves understand their own powers: for they by clear implication acknowledge that they have no such power, in their second resolve of the second of March last, whereby they ask the people that such a power be given them not expressly and directly indeed but implicitly and indirectly; and wherefore do they ask it, if they had it given them by their original appointment?

So that if the people should now affirm the frame of Government which the Convention have communicated to them, containing the said fourth article whereby many adult rateable per-

sons who are inhabitants and citizens of this State, and have never done any thing to forfeit their natural and most important rights, are excluded from voting for a representative or representatives, for the towns where they dwell; it will be precisely a like case, with that above put, to wit, where the ninety nine of one hundred free and equal men conclude to usurp dominion, and jurisdiction, over the hundredth man, against his will, that is to deprive him of his natural liberty, which is no other than to enslave him when he had been guilty of nothing, whereby he had forfeited that natural liberty and equality. It is certain that the said section intituled house of representatives, supposes that the polls in the State whether they shall be owners of property, or not, will always be taxed, witness the second article of the said section, and we know that they always have been the subjects of legislation in this State and have had many heavy burdens, and services set on them, by the legislature, especially in time of war, and that, will, no doubt, continue to be the case, (tho probably not in so great a degree) even if they should have a voice in the appointment of representatives.

Dont we know that whenever any mention is made of a tax Act, or proposal in the legislature of taxation, it is always spoken of as as a tax on polls, and Estates, that whenever a list is ordered for the purpose of a new valuation, an exact account is directed to be taken, of the number of polls above the age of sixteen years—in the several towns in this state, and that when the house or their committee are settling a valuation, the first business always is to fix the proportion of a single poll, to a thousand pounds, and dont we know, that the owners of large property, generally, upon such occasions strive to get the polls share, as high as they can;¹¹ for they are fully sensible that it is their interest, that the polls share should not be low, for the higher that is, the less will remain on the estates, and they conduct in ye case accordingly.

¹¹ Hawley was only too true a prophet. The proportion of the state tax raised by poll taxes rose from 30 per cent in 1778 to 40 per cent, in 1786, and was one of the many forms of injustice that helped bring on Shay's Rebellion.

Now do we hear from these poor polls, a single objection, against the persons who are owners of large property, their voting for the members of the house of representatives? they consider that such property holders have personal interests and concerns, as well as the poor day labourers; further do they object a word against the owners of the property chusing, one entire branch of the legislative, exclusive of themselves, to be guardians of such property? they feel and own the force of the argument for property's having great weight in the legislature, because property ever was and ever will be the subject of legislation and taxation.

But pray Gentlemen shall not the polls, the persons of the State, have some weight also, who will also always be the subjects of legislation and taxation? are life, members and liberty of no value or consideration? Indeed Gentlemen we are shocked at the thought, that the persons of adult men, should like live stock and dead chattels be brought to account to augment the capital whereon to draw representatives for particular towns, in ye same manner as such chattels are to be brought into the property capital to augment ye number of ye senators and when they have been improved and made the most of that maybe for that purpose, they should be wholly sunk & discarded, not to say like villains but absolutely like brute beasts. Shall these poor adult persons who are always to be taxed as high as our men of property, shall prevail to have them set [*sic*], and their low pittances of day wages, be taken to lighten the burden on property? Shall these poor polls who have gone for us into the greatest perils, and undergone infinite fatigues in the present war to rescue us from slavery, and had a great hand, under God, in working the great salvation in our Land, which is, in a great degree wrought out, some of them leaving at home their poor families, to endure the sufferings of hunger & nakedness, shall they now be treated, by us like villains or African slaves? God forbid!

What have they done to forfeit this right of participating in the choice of one branch of the two branches which are to constitute our legislative, when they are willing that you men of property should enjoy the exclusive right of chusing the first

branch—have they forfeited it in the exercise which they have made of this right of participating in the choice of you gentlemen to your important, very important trust? we hope not and we hope that you will on further consideration verify it that they have not by giving them a voice in the choice, & appointment of that very branch of the Legislative, which you yourselves tell us is by you intended, to be the representative of the persons of the Commonwealth, and thereby remove all cause for them to regret their choice of you.

Gentlemen, we cant yet dismiss this very affecting subject. Shall we treat these polls precisely as Britain intended and resolved to treat all the sons of America, that is to say, to bind us in all cases whatsoever, without a single vote for the legislature who were to bind and legislate for us, at which all Americans who deserved freedom, had the highest indignation and that most justly? We say, who deserved freedom; for he who is willing to enslave his brother, is if possible less deserving of liberty than he who is content to be enslaved. Shall we who hold property, when God shall have fully secured it to us, be content to see our brethren, who have done their full share in procuring that security, shall we be content and satisfied, we say, to see these, our deserving brethren on election days, standing aloof and sneaking into corners and ashamed to show their heads, in the meetings of freemen; because by the constitution of the land they are doomed intruders, if they should appear at such meetings? The thought is abhorrent to justice and too afflictive to good minds to be endured.¹²

We beg leave also freely to declare to you, that we disapprove of the third article of the first section, intitl'd "Governor," of the second chapter intitl'd executive power, and apprehend in case our last proposal shall be adopted that it stand thus, "Those per-

¹² The Constitutional Convention of 1853 submitted a new Constitution which was rejected by the people. It provided for the abolition of property qualifications for voting. The third amendment of the Constitution, adopted in 1820, had done away with all the property qualification for voting except payment of a state and county tax. Since the thirty second article of amendment in 1891, not even the poll tax payment has been required as a condition for voting.

sons who shall be qualified to Vote for representatives, within the several towns of this Commonwealth, shall at a meeting to be called for that purpose &c." That adult male persons inhabitants of the State ought, and have a right to have a vote in the choice and appointment of the first executive magistrate we think may be fairly argued from the powers, which by the frame of Government are given to that magistrate. In the first place the most important of his powers, of nominating and with the advice of his council appointing almost all judicial and executive officers.

You are pleased in your preamble to your declaration of rights—to aver that it is the duty of the *people* in framing a Constitution of Government to provide, not only for an equitable mode of making laws, but also for an impartial interpretation and a faithful execution of them, that every man may at all times find his security in them. Now we humbly ask whether the polls or male persons, of the age of twenty one years are or are not a part of the people of the State, altho they shall not own a freehold of £3 per annum or any estate to the value of sixty pounds? Most certainly they are—. Will not an impartial interpretation, and a faithful execution of the laws affect and concern them? Most certainly it will. And without such an interpretation and execution of the laws, that part of the people will find no more security in them, than the men of property.

Besides, the fifth article of the declaration declares that all power residing originally in the people and being derived from them, the several magistrates, and officers of Government, vested with authority whether legislative, executive or judicial, are their substitutes and agents, and are &c. Now if the male adult persons of the State who have not so much property as is prescribed and required in the said third article, to entitle a man to vote in the choice of the Governor, are a part of the people of the State, but shall not be admitted to vote in the choice of their first magistrate the said fifth article of the declaration will be absolutely falsified and ought to be expunged.

Also the Governor by the frame of Government is to be Commander-in-chief, of all the military forces of the State, by sea and

land: these poor people always have been and we believe always will be, considered as part of the military force of the State, both by sea, and land. They most certainly will therefore be interested in this first magistrate—considered in his military character, and consequently can't justly be excluded from voting in his choice. As to the Governor's exercise of his civil powers the property men will be wholly safe for the Governor will not be able to act scarce anything in his civil character, without the advice and consent of his council, which council, are always to be of the men who shall be chosen solely by the property men in case they will accept their choice.

Pray, Gentlemen, therefore make the experiment for one seven years, of admitting these poor persons qualified as is specified in the proposed addition, to the said fourth article to the exercise of their natural, not to say unalienable right of participating in the choice of the representative of the persons of the Commonwealth and also of the first magistrate of the same, and if by the experience of seven years it shall be found so unsalutary, as to become absolutely necessary to deny that exercise to them, as it is in the case of infants, at the time of the first revision of the constitution they may be denied that Exercise.¹³—

This paper was dated June 5, 1780. It was submitted to the Town Meeting in Northampton and adopted. By a vote of 79 to 6 the following section was also adopted and made a part of "the reasons offered in favour of the proposed amendments in the Constitution."—EDITOR.

Thus, Gentlemen, We have taken the liberty to object to Several of the Articles in that frame of Government which has been sent out to the people & have proposed such alterations and amendments as appeared to us to be reasonable. We have also humbly offered the reasons which induced us to propose the

¹³ Hawley's suggestion of a revision of the Constitution after seven years' trial was not adopted. Amendment was provided by the Constitution of 1780, in 1895, if the people so decreed by a two-thirds vote. They did not so decree.

afores^d alterations, which we cheerfully submit to your revision and full consideration not doubting that you will give every argument we have used in favour of the proposed alterations its full weight, and we should be happy to find that they have the same influence on your mind, as they have had upon ours. But if it should be otherwise, after you have fully considered them, we shall submit to it as it now stands, for as the convention shall confirm it to the sentiments of two thirds, we do not mean to be so tenacious of our own opinions as not to approve of any thing that is not done exactly to our taste.

JOSEPH HAWLEY'S PROTEST TO THE CONSTITUTIONAL CON-
VENTION OF 1780

The following letter, dated June 5, 1780, the same day that Northampton adopted her letter to the constitutional convention, represents Major Hawley's personal views. He was a most devoted champion of popular rights, as the Protest well shows; and we here encounter, with him as spokesman, the ideas of the popular party on constitutional law. It throws an important light on the attitude of mind in the interior of the state, out of which Shay's Rebellion was to grow.

The Protest is preserved in the Hawley Papers, in the New York Public Library, and is written partly on the back of a commission issued by Lieutenant-Governor Phips, September 20, 1755, to Williams, Hawley, and Partridge authorizing them to administer the oaths appointed by act of parliament to the officers serving in the forces raised for reinforcing the expedition against Crown Point.—EDITOR.

Tho the Hon^{ble} the Convention for framing a New Constitution of Government for the State of The Massachusetts Bay—

When by the Second resolve of the second of March last, It was recommended to the inhabitants of the Several Towns and Plantations in this State, to empower their delegates at the next session of the Convention, to agree upon a time when the form

of government, which was then about to be communicated to them should take place, without returning ye same again to the People, provided that two thirds of the male inhabitants of the age of twenty one years and upwards, voting in the several town and plantations meetings should agree to the same, or the Convention should conform it to the sentiments of two thirds of the People.

I cannot imagine that if it should appear at your meeting on ye first Wednesday in June next, by the returns y^t Two Thirds &c, should have agreed to the s^d form of government exactly in the dress in which it has been sent forth to them, or in case you should find it practicable to conform it to the sentiments of two thirds, &c and if a majority of your constituents had given you the power and high trust which you had recommended to them to give you, it was intended in fixing ye form of Government which you would then be empowered to establish for this State without returning ye same again to the people that you should hold yourselves absolutely restrained and confined to establish either that numerical form of Government which has been already communicated to the people, without adding or taking from the words of that Book the least jot and title. Or if that precise form should not be accepted by two thirds &c. that in conforming it to their sentiments you must take and insert into ye frame of Government, the very articles which they had adopted and expunge and leave out all the articles, which two thirds, &c., shall either expressly or constitutionally appear to have disapproved and not to be in favour of, in what parts of the Bill of Rights, or frame of government soever they should be found to lay.

I say, I cannot imagine that you would hold yourselves so restrain^d—For if so, in the first case you will at your approaching Meeting instead of deliberating, discussing, consulting, advising with one another, and concluding for yourselves, and improving and giving the publick the benefit of your own studies and meditation, not to mention what you may have had suggested to you by others in the Conversation and Conferences with which you have honored them, you will have nothing to do but to ratifie and put your Fiat to that precise form of words and doctrine which

was agreed upon at Boston last winter in the most unclement and distressing season perhaps ever known in New England,¹⁴ and when more than two thirds of your Body not by any laches¹⁵ or default of their own but merely by the Act of God were prevented attending ye Convention and however dissatisfied you yourselves may be with it have only to fix the day when the new Constitution shall begin to operate and take effect in ye State, give your solemn Imprimatur to it, without the Peoples' ever seeing or hearing any more of it without resorting to the Parchment enrollment thereof, in the Secretary's office untill they shall in some future edition of the Commonwealth Law Book find it prefixed thereto in the place of William and Mary's Charter. Or in the second case you will have the laborious ministerial task to go through of investigating what and how many articles are not disapproved nor excepted to by a greater number than one third of the Inhabitants qualified to vote and who did actually vote in ye premises to enter them down as affirmative quantities and carefully to discern such articles as shall have been disapproved by two thirds of the s^d voters, and either wholly blot them out and dismiss them, retaining only the aboves^d affirmative quantities to compose the Constitution or finding out if possible what the two thirds would have in the room of the reprobated articles, enter them down in their place. Put all together and then whether there shall be, in the code containing both the declaration of rights and frame of Government, Consistency or Repugnancy, Connection or Mutilation, or (as a very Worthy and Acute Gentleman express^d himself in his remarks on the two first resolves of March last) whether it shall have any likeness of anything, that is in heaven above or &c. or not, in some very Solemn Manner declare and Publish ye s^d Code for the Constitution of this State how ever Chagrin^d the Members of the Convention themselves may be at the production, or however absurd and ridiculous they may

¹⁴ Said to be the worst winter since that of 1717, described by Cotton Mather. Deep snow made travel impossible save by snow shoes. Boston Harbor was frozen solid for a month.

¹⁵ Laches, negligence.

know it will appear to their Constituents and to all the world, who shall ever see it.

Gentlemen there are many who suppose that you will by y^e genuine force and constraint of the s^d two resolves and the returns which probably (will) be made in consequence of them, be holden to such a mode of procedure; But I have no imagination that such a literal interpretation will be on y^e s^d resolves by the Convention as to infer such ridiculous destructive Conclusions.

Gentlemen, there seems to me to be a sense strongly implied in the s^d Second resolve of March last and also in the last part of the 1st resolves of the same day, which implied Sense in case two thirds of your principals shall vote in the affirmative on the s^d Second Resolve, will give the Convention such a power which I hope they will never accept or consent to exercise. In case it shall by the votes appear, that Two thirds, of your Constituents in ye impatience or zeal, I had almost said rage, to fix an immediate establishment of a Constitution, by their votes shall have agreed to the form of governm^t which *totidem verbis*, that part of ye Convention that met at Boston last winter have sent out to them, you will then indeed be impower^d to ratifie and establish that precise frame of governm^t as it stands in the Book sent out to y^e Country for the Constitution of this State.

But will you be held and obliged so to do if that shall be the case; that case I venture to say will be a very unhappy one—The least misfortune which will be y^e consequence of it is that 260 or perhaps 300 Men will have assembled from y^e several parts of y^e State, probably some from y^e remotest parts thereof with great expense to themselves or constituents, fraught with useful, important materials for constructing a happy, free and Salutary frame of Government the fruit both of their own patriotick lucubrations and the matured study of their constituents. And when they shall be met in solemn convention prepared for sage debates and discussions they shall find that matters have been so steered and directed, by part, a small part of their number who assembled at Boston in the dead of last winter that nothing remains for them to do but what might better much better be done by a small

Comtee like unto that frequently appointed in the Gen^l Assembly to count and sort votes for a notary publick or some such petty officer than by y^e whole Convention, namely the arranging and numbering the votes of y^e several Towns upon the question contained and stated in the ye s^d second resolve.

This I say in consequence of a devise of a part of a convention for I do not see with what propriety a less part than a third of the whole number of the delegates who had been returned and had actually appeared in Convention when it had never been agreed in convention what number should constitute a quorum, I say I do not see with what justice such a part could be denominated *the Convention*, the only natural quorum of any body of individuals is a Majority and 2-5 or even 2-7 of a body, when the Number to constitute a Quorum has not been agreed in Convention cannot undertake without injustice to consider themselves a Quorum of the Body and pass acts and resolves to bind ye whole assembly when the rest of the body are absent not through their own LATCHES but by ye Act of God and cannot be viewed in ye light of defaulters¹⁶—

Can anyone be so wild as to suppose that the Convention altho' empower^d to establish a particular draft for the Constitution of this State and who *decide when the same shall take place without returning it to the people*, shall be strictly holden and obliged so to do, when perhaps that very draft shall appear to two thirds or perhaps three quarters, of the Convention themselves to contain many grievous errors, to be in diverse respects deficient and some articles irregularly, and in others absolutely Contradictory and repugn^t, and on the whole really so imperfect so that if establish^d and published to the world It would Not only be disparaging to the State, but bring reproach or ridicule on y^e Convention?

I conceive that the full Convention will if the s^d Second resolve should be pass^d in the affirmative by even 7-8 instead of 2-3

¹⁶ There are two hundred and ninety three names in the list prefixed to the Journal of the Convention, but the number of members present and voting even at the third session, never exceeded eighty two.

of their Constituents, consider themselves at full liberty to correct any errors which they shall judge are contain^d in the s^d form of Government agreed upon last winter at Boston and communicated this Spring to y^e Country and to cure its deficiencies by any additions and new matters which may occur to and be proposed by members of their own body or suggested by the returns of any town or towns in the State—for it is natural to observe that as to new matter or any addition thought on or proposed by any particular town there could not be the least chance of a Concurrence therein by 2-3 or one hundredth part of ye Towns in y^e State even if the addition or new matter as soon as heard by the towns should appear to be so salutary and so much of an improvem^t on the Model or form of Governm^t, that not only Two thirds but nine tenths of the towns and voters in the State would most eagerly and cheerfully adopt it. and who can without the most unworthy thoughts of the Members assembled at Boston last January &c suppose that so an illiberal an interpretation ought to be put on their call to the inhabitants of ye several Towns to state their objections, as y^t they intended to preclude all proposals of new matter, either for the declaration of rights, or frame of Government.

Besides, if so narrow, and rigid a construction should be put on the said second resolve, as not to admit of the above latitude, in the future proceedings of the Convention, the State will in fact be in a great degree defeated, of the benefit and advantages, of a convention; for I am well informed that nothing more than the articles contained in the declaration of rights, has ever been passed on, in full convention: I say the establishing a constitution upon the abovesaid narrow interpretation, of the said second resolves, will in fact defeat the people of this state, of the principal end and intent of chusing a convention, which was that a plan or form of government should be projected, and prepared by their Delegates in Convention assembled, upon great advisement, deliberation, free discussion and debate; whereas if the present form of Government should be fixed and established for the Constitution of this State, because it shall have been

found, upon the examination of the expected returns, that two thirds of the male inhabitants, of the age of twenty-one years, and upwards, *voting* in the several town and plantation meetings, had from their great anxiety, and concern, for an immediate establishment of something, to be denominated the Constitution of the Massachusetts, agreed to the same;¹⁷ The case in truth will be, That the state of the Massachusetts Bay, will have an unadvised, unconsulted, undiscussed, indigested, tautological, ragged, inconsistent, and in some parts unmeaning, not say futile plan, established in it, for its constitution of Government.

That upon the supposition last made the case with the Massachusetts Bay will be really as I have affirmed I shall endeavour to make appear in the following way, To wit, The full Convention when they adjourned last fall from Cambridge to Boston had never discussed or passed upon any more of the report of their Com^{tee} than the articles contained in the declaration of rights, if they had on the whole of them, whether the after frame stood upon or varied from or was inconsistent with y^e s^d Declaration, as a Convention they had not examined, as to the number of Gentlemen, members of the Convention who were together at Boston last winter at and after the day to which the Convention stood adjourned, as ^{to} certain number ever had been agreed on to constitute a Quorum they cannot by any reasonable Construction be denominated or taken to have been the Convention unless by great liberality; and of necessity, they should be considered such merely for the purpose of adjourning, to prevent a dissolution, or the necessity of a new Summons of the Members as far the greater number of the members were prevented giving their attendance by the Act of God.

And as to the said plan's sent out by the gentlemen met at Boston as aforesaid, having been advised, or considered, and consulted by the People in the way that they have been called on to act on it, No one will affirm that it has who considers that each Town which has or may act upon the same, either in the

¹⁷ Hawley probably referred to Pittsfield, where "No Constitution, No Law," was the popular cry.

gross or article by article, undoubtedly has or will act upon it severally, and without any privity, or conference with any other town; so that whatever objection, for instance, the town of Hatfield might find to make to any one or more articles, the Town of Northampton was not apprized of it, or whatever amendment the Town of Northampton would wish to suggest, the town of Hatfield had no notice thereof—had those two towns consulted and advised together, perhaps in the first case Northampton would have wholly obviated the objections of Hatfield, and in the second case the Town of Hatfield might have fully convinced Northampton that their additions were unsalutary.

And to support the other epithets that I have ventured to give the said plan, I propose to have resort to the Several Articles of the Plan itself. But before I enter on a particular examination of the Plan, I will observe a few words, on the alternative of the Proviso of the said Second resolve: The alternative stands in the words following viz, "Or the Convention shall conform it to the Sentiments of Two Thirds of the People"—I think it reasonable to understand these words, "The sentiments of two thirds of ye People" to mean the sentiments, which shall be declared in the returns, which the Selectmen are called upon to make, to the Secretary of the convention to be laid before the *examining* and *arranging* committee in order that they may be revised, and considered, by the convention, &c.

Now can any man in his senses, expect, that if the first part of the proviso, shall be found not to have taken place, that is to say if it shall be found either by the said *arranging* committee, or by the convention at large, that there are not two thirds of the male inhabitants, of the age of twenty one years and upwards, voting in the several town and plantation Meetings, which have agreed to the communicated plan, the sentiments of two thirds of such voters, when laid together, and truly and faithfully, reduced to articles, will constitute such a form of government, as that either that part of the Convention who were the authors of this proposal, or the majority of the whole convention, or the

said voters themselves, when they should come to see the articles, so put together, would be satisfied with; or ever Consent to it, as a constitution of Government?

In the first place, I believe it will require the industry and distinguishing faculties, of beings superior to the human kind, satisfactory to determine, from such returns, what the sentiments are, in which the said two thirds, of the people, are agreed.¹⁸ Nextly if it be considered that every meeting or body of the voters, who shall have passed on the articles of the said plan, either severally or in the bulk will all have acted without any privity, or intercourse with each other, the sentiments in which two thirds shall be found to have agreed, must be expected to be very few in number and very probable that when such sentiments, and such only, shall be fairly arranged and reduced to articles, they will be found to be very incoherent, and independent of each other; for nothing is more likely than that, each set of voters, when they voted for one sentiment, considered it as connected with a set of sentiments, very diverse from the set of sentiments, with which another body of voters, who shall have luckily adopted the same sentiments, expected it would be connected with in the constitution. Therefore I believe that no success will be met with, in attempting to get a constitution, by the way of conforming (for I suppose we are to understand a strict conforming) to returned sentiments. If this conforming to the returned sentiments, of two thirds, intends no more than this, viz, that the convention shall not make a constitution that impugns the plain sentiments, of two thirds of the people, they will then have the latitude which I above declared, that I wished them to take, and then all the noise about the convention's being bound, by returned sentiments, will be at an end, for who ever imagined that the convention would insert articles in a constitution directly repugnant to the known sentiments of two thirds of their constituents.

¹⁸ The reader is referred to the article by Samuel Eliot Morison in the "Proceedings" of the Massachusetts Historical Society, May, 1917, page 396, for the method of tabulating returns employed by the Convention.

But it is time to give some close attention to that form of government, which has been sent forth to the country, in 1800 copies, for the constitution of the commonwealth &c. And after the preamble we find in the first part of the first article, of the declaration of rights, a great and glorious truth asserted in the following words, viz, "all men are born free and equal, and have certain natural, essential, and unalienable rights." Whether all the rights enumerated in that first article, as unalienable, as well as natural, are truly so, I shall not stand to inquire or whether they are the best chosen, as instances of the unalienable rights of mankind may admit of some dispute, however, the said first article contains so much clear and important truth that it no doubt gave great encouragement to the lovers of right, and truth, that all the following articles of the declaration, would consist of clear, indisputable and important truths; and of none but such, and I conceive that it was natural to expect, that the declaration of rights would wholly consist of clear truths, of the most important and unalienable rights of human nature, and laid down in the most intelligible, determinate and unequivocal words, which our language furnishes that so the declaration of rights instead of ministring occasions and matters of dispute, hereafter in the state, would have served as a solid and immoveable foundation, a fixed pole-star, and an unerring standard, for every article in the subsequent frame of government, calculated to give peace and security to the inhabitants of the Massachusetts Bay, and a perpetual directory, to all future legislatures in devising, and enacting, laws and statutes, for the good and equitable government of the said inhabitants.

But instead of a set off articles of the kind above defined, we find the first part of the very next article to contain, a proposition which if true, is far from being indisputable, and positively denied by many, viz, That it is the duty of all men in society, publicly and at stated seasons, to worship, &c." Whatever the apostle Paul has said, in favour of public worship, he has certainly said much to make us doubt whether the Supreme Being does, since the Resurrection of Christ, require of men in

or out of society to worship him, at any stated seasons: this is certain, if our common Bibles are a true and genuine translation. As to the third article, I am humbly of opinion that the first paragraph of the said article contains two propositions, which are not true in fact, viz, That the *happiness*, (I conclude temporal happiness is intended) of a people, and the preservation of civil Government, essentially depend upon piety and religion. And the second is, That the people of this Commonwealth, have a right to invest their legislature, with a power to require, their several towns, parishes &c. to make a suitable provision *at their own expense*, (a caution scarcely to be expected in an article of the kind), for the institution of the publick worship of God, and for the support and maintenance of publick, protestant teachers, &c. This second proposition is false, because it is inconsistent with the unalienable rights of conscience, which rights are certainly unalienable, if mankind have, (as the first article avers they have) any such rights.

Besides, the said third article is justly exceptionable, on account of the several loose and indefinite terms and phrases contained in it; as Public Worship; Public Teachers; if there be any on whose instructions they can conscientiously and conveniently attend; be uniformly applied, otherwise it may be paid &c &c. Now this looseness and uncertainty of language is by no means to be attributed to want of knowledge, and acquaintance with language in the authors of said third article, but to the absolute impossibility, of making or enacting a religious establishment in clear language, and in terms, and phrases, of a fixed; definite and certain meaning which shall be consistent with the rights of conscience,¹⁹ and therefore to preserve the appearance of such consistency, the managers in this business always hunt up loose, and equivocal words, and phrases, whereby they only seem to

¹⁹ Long afterwards John Adams writing to William D. Williamson, the historian of Maine, gave as his reason for not drawing this article personally, "that he could not satisfy his own judgment with any article that he thought would be accepted; and further, that some of the clergy and graver persons than himself would be more likely to hit the taste of the public." "Works" of John Adams, IV, 222.

mean; but as the Poet says in another case, really "mean not, but blunder round about a meaning".

And it must be plain to everyone who shall carefully attend, to the four first paragraphs of this third article, that instead of its being a clear directory and guide to future Legislatures in legislation: their acts and laws touching religion, which they are hereby authorized, and required, to make, if made conformable to the article itself, will afford plenty of that glorious uncertainty, which is the source of the emoluments of the men of my profession.²⁰ As to the last paragraph of the said third article, I have only to observe that it would stand with a much better grace, in the after frame of Government, or in some statute of the future ordinary legislature, than in the bill of rights.²¹

The first averment in the ninth article is true enough to deserve a place in the declaration of rights; But the residue of the said ninth article will bring to the mind of every one who has heard it, Mr. Ward's doggerel description of the Salem Fair, viz—

"There's a Fair at Salem, a little behind the Hill,
Where something may be bought, if anything is to sell."

Besides, it is exceptionable for that it does not contain a compleat and entire aphorism in itself; but instead of being a foundation Stone, for the future Structure or frame of Govern-

²⁰ "This article underwent long debates, and took Time in proportion to its importance; and we feel ourselves peculiarly happy in being able to inform you, that though the debates were managed by persons of various denominations, it was finally agreed upon with much more unanimity than usually takes place in disquisitions of this nature. We wish you to consider the Subject with Candor, and Attention. Surely it would be an affront to the People of Massachusetts Bay to labour to convince them, that the Honor and Happiness of a People depend upon Morality; and that the Public Worship of God has a tendency to inculcate the Principles thereof, as well as to preserve a People from forsaking Civilization, and falling into a state of savage barbarity." "An Address of the Convention to their Constituents," p. 10.

²¹ "Joseph Hawley, the only political leader of Revolutionary Massachusetts whose religious views were broad and tolerant, made every effort to get a bill through the General Court to disestablish the Congregational churches but could not get it to a vote." Morison, *Mass. Hist'l Society, Proceedings*, Vol. 50, p. 376.

ment must wait on the after frame of Government for its sense, and its meaning is to be ascertained by a contingency, which when it falls, may give the article such a sense, as shall be very little declaratory of native and original equality of rights in the electors and elected. . . . And I pray any Gentleman concerned in constructing the Tenth article, to inform me what certainty or security he or I shall have by virtue of the said article that his or my property will not be very unreasonably and unjustly taken from us, by the consent of some future representative body, of the people, possibly to be applied to private uses, instead of publick, perhaps in direct repugnance to our natural right of protecting our property, declared in the first article; for we have no assurance from this tenth article that we shall ever have any hand, voice, or influence in the appointment of the body which may be denominated the representative body, of the people. And what assurance does this same article afford us, that we shall not be controlled by the most unreasonable and iniquitous laws, so long as it remains uncertain what body of men will be our constitutional representative body?

Notwithstanding anything contained in this article, or any other article of the declaration of Rights the constitutional representative body, who will have power to controul our liberty and dispose of our lives, may be such an one in whose appointment neither he nor I shall have had any vote, and what just expectation can such a representative body, of the people, or constitutional representative body, give us that whenever the public exigencies shall in their opinion require that our property shall be appropriated to what they will please to call publick uses, we shall receive a reasonable compensation therefor. It is also exceptionable for that instead of its being a part of the basis of what should be a proper structure, upon a bill of rights we must whenever that building shall be erected, resort to it in order to understand the sense, and meaning of this article. It therefore evidently appears to be only a well sounding declamation, rather than a certain firm and solid foundation of our property, rights and liberties.

The last paragraph of the twelfth article, and the necessary implication of the twenty-eighth article, are plainly repugnant to each other.

The fifteenth article is conceived in so uncertain terms and sentences as that not so much as the intention and design of the constructors of it, can be known, without their further explanation and comments: And therefore cannot be the foundation of any security to the subject, that his controversies with his fellow citizens concerning his private property, shall be tried by a jury. Besides, I think the declaration of rights ought to contain some certain and explicit security to every individual that all his disputes, and controversies concerning property, between himself and the publick or what will probably be hereafter called the Commonwealth, should be tried by a jury, which security I do not find explicitly provided for, in the bill of rights; for I do not take that provision in the twelfth article, to be sufficiently explicit, for that intent: the similar expressions in Magna Charta have not been understood to have such a meaning as to be a security for that purpose, they having been understood to relate to fines and amerciaments.

The twenty third article is no other than a repetition in different words of the sense of a part of the aforesaid tenth article and I think a plain tautology, if subsidies, taxes, imposts, &c are devices for the purpose of drawing property from individuals, for real or pretended publick uses.

In the frame of Government there are some things which to me appear extraordinary. And the first thing I shall mention is what relates to the dissolution of the legislative body, or General Court. In the second paragraph of the first article of the section intitl'd General Court, it is provided that the said body shall dissolve and be dissolved on ye day next preceding the last Wednesday in May, every year, (which in my ears is not very dissonant from that verse in the ballad: "Now is the Crisis and the Crisis is now," &c). In the fifth article of the section intitl'd Governor, it is also provided, that the Govern^r with advice of council, *shall have power*, to dissolve the General Court on

the day next preceding the last Wednesday in May. And in the last paragraph of the same article, It is provided absolutely that the Governor shall dissolve the General Court on the day next preceding the last Wednesday in May. This provision seems to be as unconditional and peremptory as the first, namely that *the said Court shall dissolve and be dissolved*,—whether the Council shall advise to the measure or not. How far these three several provisions for the dissolution of the General Court, on the day next preceding the last Wednesday in May annually, when put together will verify the epithet of Tautological I submit to people of Common Sense.

But I shall nextly take notice of some particulars, which seem to me exceptionable on more serious accounts. And I observe that in the second article of the section intituled house of Representatives the number of rateable polls contained in the several towns are made the rule whereby to make certain, the number of Representatives which the several towns shall be intituled to elect and I take notice by the tax act last passed, by the General Court (and I am told the case has been the same in several preceding tax acts) negroe and mulatto slaves are made rateable polls, they are made rateable polls if all persons who by law are to be assessed as Polls are rateable polls, and they are truly denominated slaves if negroes and mulattoes under the government of masters or mistresses are slaves. Now Gentlemen, if this is the real intent of the said article that negro and mulattoe slaves are to be brought into the account to constitute the number of rateable polls, which are to intitle towns to elect Representatives, and if this was generally known and understood to be the meaning of that article; I really doubt whether one third of the voters in the state, would empower you to agree upon a time when a form of government containing that article, in its present form and tenor should take place.

I observe also that the fourth article of the same section which virtually excludes many freemen, natives of the State, and of the age of twenty one years and upwards from voting in the choice of the representative for the town where they are resi-

dent, and also the third article of the section intituled Governor which excludes the like persons from voting in the choice of a person for a Governor are demonstrably repugnant to the first, and fifth articles of the declaration of rights; I say demonstrably repugnant, because that repugnancy is as easily demonstrated as any proposition in Euclid or any other Geometrician or mathematician.

You may perhaps reply that such persons as are in effect excluded from voting in the said elections have been wont to be excluded from voting in elections in this and the neighboring governments: Pray Gentlemen consider did this, or any of the neighboring Governments enjoy Constitutions that were built on a bill of rights containing the same or articles really similar to the first and fifth articles afores^d, upon which articles it is certainly proposed that the Convention intend to erect their frame or form of government. Gentlemen, when in the reading your frame of government I had arrived to the first declaration in the first article of the sixth chapter intituled "Oaths and Subscriptions" &c. which when it shall be exemplified and (put) in use, I suppose will stand thus, to-wit,

I, James Bowdoin, or John Hancock, or I James Warren, do declare, that I believe the Christian religion; and that I am seized and possessed in my own right of a freehold within the Commonwealth, of the value of One thousand pounds. . . . I say when I first attended to the said declaration I could not for my life help thinking that it sounded very like the constant charge of a quondam, first Justice of the Bristol Sessions, to the standing grand jury of that county, who, after some Common place dilations, on the wisdom and usefulness of the institution and the importance of their trust to the Country never failed of concluding his charge with the words following, To wit, Gentlemen, the chief heads of your enquiry ought to be whether the several towns in the county, are provided according to law, with Pounds, and Schoolmasters, Whipping-posts and ministers.

Gentlemen, when I seriously reflect upon the various blunders, errors, and important inconsistencies of the performance of that

part of your number assembled at Boston, the last Winter, intitled "A Constitution or form of Government for the Commonwealth of Massachusetts," and compare that declaration contained in their address to their countrymen, namely, That they intended the house Representatives as the representative of the persons, and the Senate of the property of the Commonwealth, with the articles wherein the qualifications of the electors both of representatives and senators are expressed; and also consider that their aforesaid second Resolve of the second of March last, taken in connection with their address to the country, amounts to a recommendation to the people that they should give their sanction to that work; and establish it, as the Civil and I may also say as the military Constitution of the Massachusetts Bay, that is in effect the main issue and fruit to be reapt and enjoyed from the vast expense, infinite sufferings and torrents of precious blood, of the more than five years war, undertaken and patiently sustained, that we might be happy in the secure fruition of rights and liberty, in this land. It appears to me that the only charitable account that can be given of such a result, is, that those *Gentlemen* of the Convention assembled at Boston as aforesaid were heavily oppressed with an honest dulness brought on by the long endurance of the uncommon severe cold of the season, in the want of the cordials and refreshment necessary to maintain that free motion of the animal spirits, necessary to clear ideas, liberal, generous and comprehensive thinking.

But be my conjecture mistaken or just, the plan recommended by them is most evidently greatly defective, and erroneous, and such an one will never do honor to the State nor be productive of the quietness and happiness of the Commonwealth. Pray Gentlemen, through the whole of this business remember that *Finis coronat opus*.

Through the shortness of my memory, I have omitted to make any remarks on the surprizing number of incompatibilities enumerated in the aforesaid sixth chapter: I am humbly of opinion that however necessary and judiciously selected some of them may be, others of them do no better merit a place in the frame

of Government than express provision that the offices of a Justice of the peace and of a church deacon should never be bestowed on one and the same man at the same time or that an innholder during his being in that employment should not in any case be a justice of the peace or selectman, would deserve to be inserted in such a work.

I am well informed, Gentlemen, that a majority of the voters in divers towns have been induced to give their sanction to the said form of Government with all its imperfections from an earnest desire that some form of Government may be more firmly established in the State, than that which at present is exercised, and that, unless we should immediately unite in (some) plan we shall fall into absolute anarchy and never unite in any form whatever. I am, Sir, fully satisfied that the danger of such an event, has been unreasonably and extravagantly magnified by divers individuals, and I think you may very safely rely upon it, that if you find that two thirds of the Voters voting in the several town and plantation meetings shall have passed in the affirmative on the said second resolve, If you should instead of ratifying the said form of Government agreed on at Boston last winter now proceed with the aids which you will probably have from the amendments proposed in the returns which you will receive, to fabricate a bill of rights, and a frame of Government, in execution of the powers and trusts with which you was invested by your original election, and when you shall have compleated the work should send it forth to the People for them to consider and pass upon, I dare venture to be responsible, that it will meet the approbation and affirmance of two thirds of your Constituents if that is necessary for its validity: Though I confess I have yet to learn, by what rule and principle of erecting Governments and establishing Constitutions any more than a Majority can become necessary: and I am not without fears that this departure from the first and fundamental principle of all societies and governments, viz, that the minority must submit in all cases to the will and judgment of the majority will soon be followed by disagreeable consequences, however desirable it may be that two thirds or

a much greater proportion of the people should concur in the same sentiments respecting a Constitution of Government.²²

Pray Gentlemen suffer me very strongly to recommend to you a conformity to the original proposal of sending the model of Government, when compleated, to the People to be affirmed by them in the gross. The hands of the People without doors laid the foundation of this revolution: their hands ought also to finish it. But Gentlemen, the Strength, force and ()²³ effects of Government do not depend upon the vote of two thirds of the people obtained by importunity and chimerical (fears) of the danger of immediate anarchy with all its horrors, in () of an indigested loose and imperfect model of government; the clearness, truth and importance of the principles upon which it is founded and the wisdom and equity of the fundamental regulations for the choice and appointment of your legislative where the whole people who are to bear any part of the charge of the support of government and are the subjects of their leigslation feel that they are free, and can clearly discern that they all have their just share and influence in such appointments; from whence a general content, satisfaction and acquiescence in the Constitution will obtain in the State. Otherwise upon short experience your State, commonwealth, country, or whatever you are pleased to call it, will be filled with murmurs and discontent and the aid which the pepole will give your Government will be feeble and with reluctance, and every wheel will labour and some wholly stop. And whatever tone your furious importunate and impetuous sticklers for a precipitate establishment of a new constitution may keep up, in case they should be lucky in obtaining offices and what they figure to themselves as honors upon new appointments,

²² "It is not far from the truth to state that the constitution was referred to the people for their consideration and detailed vote, the consent of two-thirds being a prerequisite, but ratified by an adjourned session of the Convention, with a fresh popular mandate. An examination of the Convention's methods of tabulating the popular vote raises the suspicion that the two-thirds majority was manufactured." S. E. Moriso, *Mass. Hist'l Society, Proceedings*, Vol. 50, p. 354.

²³ The manuscript has been slightly damaged so that a few words are missing and some others are doubtful.—Editor.

the people in general will be discouraged, judge that they find a pitiful compensation for all their drudgeries, hazards and taxes, will apply to their own case the story of the Welchman's () and will talk high of returning back into Egypt, to the encouragement, exultation, and triumph, of Tories; to the great disturbance, if not to the entire downfall, of your Government; and it ought always to be remembered, that Egypt will be ever ready to embrace them.

Therefore I beg of you Gentlemen to correct your bill of rights, make it clear, sensible and consistent throughout with the first all-important proposition of the afores^d first article, to-wit, That all men are born free and equal; and to the second proposition, which is equal to the first, That all men have certain natural, essential and unalienable rights; Upon those two principles or propositions let all the following aphorisms of your declaration and all the articles of your frame of government, stand, as a simple well compacted building, upon a deep, broad, and immovable base. Pray give over the impossible (task) of endeavoring to make a religious establishment, (consistent) with the unalienable Rights of Conscience which you can no more effect, with precision and in clear determinate language that you can make a curve line parallel to a straight one.

Give to the People a personal Representative in the Legislative Body in the choice and appointment whereof, every freeman, an inhabitant of the State, of the age of twenty one years, that is to say, every person of competent judgment and capable of voting freely shall have a voice, hereby doing proper honour and paying due regard to the rights of human nature; and let us never more be puzzled and plagued and vexed with the jargon of a virtual Representation. Make a more ample provision if necessary that property should have a full representation and just weight, in the legislative, certainly it merits a great share: Let every adult freeman have his right given him, to vote for the Governour: Let the militia be gratified with a septennial choice of all their field and company Officers in the manner provided in the last plan: Be pleased to delete and wholly expunge your unprecedented un-

necessary and uncouth declaration, or confession of Faith, provided for your Governor, Lieutenant-Governor, &c: Make an absolute and unconditional provision in the frame of Government for a revision of the whole Constitution, at the end of seven years from the time of its Commencement and affirmance; provided always that such a revision shall never enure, be construed, or taken, to suspend or in any degree invalidate the whole or any part of the Constitution, until, and in such parts thereof only, wherein upon such revision it may be expressly altered.

When the last plan shall be corrected in the manner I have above proposed, I have no doubt but the Convention may with great safety to the State, and honor to themselves, dissolve and be dissolved, and send out their Constitution or plan of Government to be ratified by the People, agreeable to the original proposal of ye General Court; ordering the return of the doings of their Constituents to be made by a convenient day into the house of Representatives for the time being.

In this way of proceeding the Constituents will consider themselves as fairly treated, and under no appearance of a cunning departure from the original proposal and no more expense incurred. The consideration and remembrance that the validity of the plan, and its being ratified and sanctified as the Constitution of the State, is to depend upon the view and act of the people, will influence you, in spite of all your care and watchfulness, to construct a constitution in some respects different from what you would otherwise do.

Before, I conclude, Gentlemen, I beg to be indulged in one more observation, although it may appear to be somewhat out of place, to-wit, There seems to me to be an unreasonable and ungrounded antipathy to any use of the word freeman, as if it implied that there were slaves in the State: Would to God that it was not the case in truth, but we all know, that to our shame there are many such; and I fear it will take a Century, wholly to abolish and take away the inhuman, unjust and cruel practice, of enslaving our fellowmen. Why therefore shall we effect to conceal and cover what we are too unwilling to annihilate and put

an end to? Such disguises will not remove the shame and just reproach—while the iniquitous practice is notorious.

I have the honor to be, Gentlemen, with great esteem and veneration for the Convention your most obedient humble servant,
JOSEPH HAWLEY.

NORTHAMPTON, June 5, 1780.

Mess^{rs} Draper and Folsom,

If upon perusal of the foregoing sheets you shall judge that the Contents (if published) will be for the good of your Country or minister edification or amusement to your customers—I give you full liberty to print the same, in your useful newspaper.

I am, Gentlemen, Your humble Ser^t,

JOSEPH HAWLEY.

P. S. If you shall determine to Publish the Contents sheets, Pray let them come out as soon as your () publication will admit—if you shall decide (not to) them or publish them speedily, please to give them back entire to Mr. Wright the bearer.

J. H.

HAWLEY'S REASONS FOR DECLINING TO SERVE AS SENATOR²⁴

To the Honorable the Senate of Massachusetts:

May it Please Your Honours,—The intelligence given me by the writ of summons under the hand of the President of Council; that I am chosen a Senator by a majority of the Voters of the County of Hampshire affords me a singular pleasure on two accounts. The one is that an election to that high trust by a majority of the unsolicited suffrages of the voters of the County is a genuine proof of the good opinion of the people of my dear County. The other is, that fair occasion that it gives me to bear a free and public testimony against one part of our glorious constitution. I style it glorious, altho', I humbly conceive it has

²⁴ See above, p. 12.

several great blemishes, on account wherof it will, until corrected, be liable in my poor opinion to very weighty exceptions; but still it remains glorious on account of the great quantity of excellent matter contained in it.

That part of the Constitution this event enables me not impertinently to except is the *Condition* or *term* which (the) Constitution holds every one to, who has the honor to be elected a Member of the General Court of Massachusetts before he may (as is expressed in the Constitution) *proceed to execute the duties of his place*. Be the person ever so immaculate and exemplary a Christian; altho' he has in his proper place, that is, in the Christian Church, made a most solemn, explicit, and public profession of the Christian Faith, tho' he has an hundred times, and continues perhaps every month in the year, by participating in the Church of the body and blood of Christ practically recognized and affirmed the sincerity of that Profession, yet by the Constitution he is held, before he may be admitted to execute the duties of his office to make and subscribe a profession of the Christian Faith on declaration that he is Christian. Did our Father Confessors imagine, that a man who had not so much fear of God in his heart, as to restrain him from acting dishonestly and knavishly in the trust of a Senator or Representative would hesitate a moment to subscribe that declaration? *Cui bono* then is the Declaration?

The extraordinary not to say absurd condition, brings fresh to my mind a passage in the life of the pious learned and prudent Mr. John Howe one of the strongest pillars of the dissenting interest in the reign of Charles the 2nd and James the 2nd. The history is as follows, that Mr. Howe waiting upon a certain Bishop, his Lordship presently fell to expostulating with him about his nonconformity. Mr. Howe told him he could not have time without greatly trespassing on his patience to go through the objections he had to make to the terms of Conformity. The Bishop pressed him to name any one that he reckoned to be of weight. He thereupon instanced in the point, reordination. Why pray, Sir, said the Bishop, what hurt is there in being twice ordained?

Hurt, my Lord, said Mr. Howe to him; the thought is shocking; it *hurts* my understanding. It is an absurdity for nothing has two beginnings. I am sure said he I am a minister (of) Christ and I am ready to debate that matter with your Lordship if you please; and I cannot begin again to be a minister.

Besides this term of executing the duties of the Place is against common right and (as I may say) the natural Franchise of every member of the Commonwealth, who has not by some crime or deliction forfeited his natural Rights and Franchises. It moreover reduces the ninth article of the Declaration of Rights to a mere futility and in such a connection it would be for the reputation of the declaration of rights if that same ninth article was wholly expunged. More than that the said condition is plainly repugnant to the first great article of the said Declaration. I am ready to debate that matter with any Doctor who assisted in framing the Constitution either in convention or without doors. The said Declaration of Faith to be subscribed which constitutes the said impolittick and unrighteous condition will I believe ever sound in every good ear almost as unearthly as the Sessional Justice's famous charge to the standing Grand Jury. Let us hear them successively. I do declare that I believe the Christian Religion and have a firm persuasion of its truth; and that I am seized and possessed in my own right of the property required by the Constitution. Gentlemen of the Grand Jury, you are required by your oath to see to it, that the several towns in the County be provided according to law with Pounds and Schoolmasters, Whipping posts and Ministers. Each containing an odd jumble of sacred and profane; but to me the charge gingles best.

By the Constitution of the Commonwealth of Massachusetts I am, may it please your Honors one of the Senators and I am strongly disposed according to my poor abilities, to execute the duties of my office but (by) the unconscionable not to say dishonorable terms established by the same constitution, I am barred from endeavouring to perform these duties. I have been a professed Christian nearly 40 years, and altho' I have been guilty of many things unworthy of that character whereof I am asham-

ed; yet I am not conscious that I have been guilty of anything wholly inconsistent with the truth of that profession. The laws under the first charter required of the subjects of that State in order to their enjoying some privileges that they should be members in full communion of some Christian Church. But it never was before required in the Massachusetts Bay that a subject in order to his enjoying or exercising any Franchise or office should make profession of the Christian Religion before a temporal court.

May it please your honors, We have all heard of a Lieut. Govr. of the Massachusetts Bay and some of us have known him very well who contended long and earnestly that he had a right to a seat in council without a voice.

I imagine that I can maintain a better argument than he did, that I have a right to a seat in the Senate of Massachusetts without a voice, but at present I shall not attempt to take it.

I am, may it please your Honors, with the greatest respect to the Senate, Your most obedient humble servant,

JOSEPH HAWLEY.

Octr. 28th, 1780.

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CONSTITUTION

OF THE

COMMONWEALTH OF MASSACHUSETTS.

PUBLISHED BY THE
SECRETARY OF THE COMMONWEALTH.



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A CONSTITUTION
OR
FORM OF GOVERNMENT
FOR
The Commonwealth of Massachusetts

PREAMBLE.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

Objects of government.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

Body politic, how formed. Its nature.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peace-

CONSTITUTION OF THE

ably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain, and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

PART THE FIRST.

A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

Equality and natural rights of all men.

ARTICLE I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Right and duty of public religious worship. Protection therein. 2 Cush. 104. 12 Allen, 129.

II. It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession of sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

Amendments, Art. XI. substituted for this.

III. [As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community but by the institution of the public worship of God, and of public instructions in piety, religion, and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for

Legislature empowered to compel provision for public worship;

the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

and to enjoin attendance thereon.

Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

Exclusive right of electing religious teachers secured.

And all moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

Option as to whom parochial taxes may be paid, unless, etc.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.]

All denominations equally protected.
§ Met. 162.
Subordination of one sect to another prohibited.

IV. The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America, in Congress assembled.

Right of self government secured.

V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

Accountability of all officers, etc.

VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children,

Services rendered to the public being the only title to peculiar privileges, hereditary offices are absurd and unnatural.

or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

Objects of government; right of people to institute and change it.

VII. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and inalienable right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

Right of people to secure rotation in office.

VIII. In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

All, having the qualifications prescribed, equally eligible to office. For the definition of "inhabitant," see Ch. 1, Sect. 2, Art. II.

IX. All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

122 Mass. 505, 506.

Right of protection and duty of contribution correlative.

X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

Taxation founded on consent.

16 Mass. 326.
1 Pick. 418.
7 Pick. 344.
12 Pick. 184, 467.
16 Pick. 87.
23 Pick. 360.
7 Met. 398.
4 Gray, 474.
7 Gray, 363.
14 Gray, 154.
1 Allen, 150.
4 Allen, 474.

Private property not to be taken for public uses without, etc.

See amendments, Art. XXXIX.

6 Cush. 337.
14 Gray, 155.
16 Gray, 417, 481.

Remedies, by recourse to the law, to be free, complete and prompt.

XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and

1 Allen, 150. 103 Mass. 120, 624. 113 Mass. 45. 127 Mass. 50, 52.
11 Allen, 530. 106 Mass. 356, 362. 116 Mass. 463. 358, 363, 410, 413.
12 Allen, 223, 230. 108 Mass. 202, 213. 126 Mass. 438, 441. 129 Mass. 556.
100 Mass. 544, 560. 111 Mass. 130.

justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

107 Mass. 172, 180.
108 Mass. 5, 6.

118 Mass. 443, 451.
120 Mass. 118, 120.

122 Mass. 332.
124 Mass. 464.

127 Mass. 550, 554.
129 Mass. 559.

Prosecutions regulated.
8 Pick. 211.
10 Pick. 9.
18 Pick. 434.
21 Pick. 542.
2 Met. 329.
12 Cush. 246.
1 Gray, 1.
6 Gray, 160.
8 Gray, 329.
10 Gray, 11.
11 Gray, 438.
2 Allen, 361.
11 Allen, 238-240, 264, 439, 473.
12 Allen, 170.
97 Mass. 570, 575.
100 Mass. 287, 295.
103 Mass. 418.

And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Right to trial by jury in criminal cases, except, etc.
8 Gray, 329, 373.
103 Mass. 418.

XIII. In criminal prosecutions, the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

Crimes to be proved in the vicinity.
2 Pick. 550.
121 Mass. 61, 62.

XIV. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.

Right of search and seizure regulated.
Const. of U. S., Amend't IV.
2 Met. 329.
5 Cush. 360.
1 Gray, 1.
13 Gray, 454.
10 Allen, 408.
100 Mass. 136, 139.
126 Mass. 260, 273.

XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

Right to trial by jury sacred, except, etc.
Const. of U. S., Amend't VII.
2 Pick. 382.
7 Pick. 366.
6 Gray, 144.
8 Gray, 373.
11 Allen, 574, 577.
102 Mass. 45, 47.

114 Mass. 383, 390.
120 Mass. 320, 321.

122 Mass. 505, 516.
123 Mass. 590, 593.

125 Mass. 182, 183.
128 Mass. 600.

Liberty of the press.

XVI. The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth.

Right to keep and bear arms. Standing armies dangerous. Military power subordinate to civil. 5 Gray, 121.

XVII. The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

Moral qualifications for office.

XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

Moral obligations of lawgivers and magistrates.

Right of people to instruct representatives and petition legislature.

XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

Power to suspend the laws or their execution.

XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

Freedom of debate, etc., and reason thereof.

XXI. The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

Frequent sessions, and objects thereof.

XXII. The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

Taxation founded on consent. 8 Allen, 247.

XXIII. No subsidy, charge, tax, impost, or duties ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature.

XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

Ex post facto
laws prohibited.
12 Allen, 421,
424, 428, 434.

XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

Legislature not
to convict of
treason, etc.

XXVI. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

5 Gray, 482.

Excessive bail
or fines, and
cruel punish-
ments, pro-
hibited.

XXVII. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

No soldier to be
quartered in any
house, unless,
etc.

XXVIII. No person can in any case be subject to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

Citizens exempt
from law-mar-
tial, unless, etc.

XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

Judges of su-
preme judicial
court.
3 Pick. 471.
1 Gray, 472.
4 Allen, 591.
7 Allen, 385.
105 Mass. 219,
221, 225.
Tenure of their
office.

XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Salaries.

Separation of
executive, judi-
cial, and legis-
lative depart-
ments.
2 Cush. 577.
2 Allen, 361.
8 Allen, 247, 253.
100 Mass. 282,
286.
114 Mass. 247,
249.

116 Mass. 317.

129 Mass. 550.

PART THE SECOND.

The Frame of Government.

Title of body
politic.

The people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body politic, or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

CHAPTER I.

THE LEGISLATIVE POWER.

SECTION I.

The General Court.

Legislative
department.

ARTICLE I. The department of legislation shall be formed by two branches, a Senate and House of Representatives; each of which shall have a negative on the other.

For change of
time, etc., see
amendments,
Art. X.

The legislative body shall assemble every year [on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May;] and shall be styled, THE GENERAL COURT OF MASSACHUSETTS.

Governor's
veto.
99 Mass. 686.

II. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve. But if after such reconsideration, two-thirds of the said senate or house of representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law: but in all such cases,

Bill may be
passed by two-
thirds of each
house, notwith-
standing.

the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law.

8 Mass. 557.

III. The general court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes, and things, whatsoever, arising or happening within the commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same: whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and making out of execution thereupon. To which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy or depending before them.

For exception in case of adjournment of the general court within the five days, see amendments, Art. I.

General court may constitute judicatories, courts of record, etc.
8 Gray, 1.
12 Gray, 147, 154.

Courts, etc., may administer oaths.

IV. And further, full power and authority are hereby given and granted to the said general court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws for the naming and settling, all civil officers within the said commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to

General court may enact laws, etc.
9 Gray, 426.
4 Allen, 473.
12 Allen, 223, 237.
100 Mass. 544, 557.
116 Mass. 467, 470.

may enact laws, etc., not repugnant to the constitution.
6 Allen, 358.

may provide for the election or appointment of officers.
115 Mass. 602.

may prescribe their duties.

General court may impose taxes, etc. See Amendments, Art. XLI and Art. XLIV.
 12 Mass. 252.
 5 Allen, 428.
 6 Allen, 558.
 8 Allen, 247, 253.
 10 Allen, 235.
 11 Allen, 268.
 12 Allen, 77, 223, 235, 238, 240, 298, 300, 312, 313, 500, 612.
 98 Mass. 19.
 100 Mass. 285.
 101 Mass. 575, 585.
 103 Mass. 267.
 114 Mass. 388, 391.
 116 Mass. 461.
 118 Mass. 386, 389.
 123 Mass. 493, 495.
 127 Mass. 413.
 may impose taxes, etc., to be disposed of for defence, protection, etc.
 8 Allen, 247, 256.
 Valuation of estates once in ten years, at least, while, etc.
 8 Allen, 247.
 126 Mass. 547.

this constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this commonwealth for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the commonwealth, taken anew once in every ten years at least, and as much oftener as the general court shall order.

For the authority of the general court to charter cities, see amendments, Art. II.
 For the state wide referendum on bills and resolves of the general court, see amendments, Art. XLII.

CHAPTER I.

SECTION II.

Senate.

Senate, number of, and by whom elected. Superseded by amendments, Art. XIII., which was also superseded by amendments, Art. XXII.

ARTICLE I. [There shall be annually elected, by the freeholders and other inhabitants of this commonwealth, qualified as in this constitution is provided, forty persons to be councillors and senators for the year ensuing their election; to be chosen by the inhabitants of the districts into which the commonwealth may, from time to time, be divided by the general court for that purpose: and the general court, in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the commonwealth the limits of each district, and the number of councillors and senators to be chosen therein; provided, that the number of such districts shall never be less than thir-

For provision as to councillors, see amendments, Art. XVI.

teen; and that no district be so large as to entitle the same to choose more than six senators.

And the several counties in this commonwealth shall, until the general court shall determine it necessary to alter the said districts, be districts for the choice of councillors and senators, (except that the counties of Dukes County and Nantucket shall form one district for that purpose) and shall elect the following number for councillors and senators, viz.: — Suffolk, six; Essex, six; Middlesex, five; Hampshire, four; Plymouth, three; Barnstable, one; Bristol, three; York, two; Dukes County and Nantucket, one; Worcester, five; Cumberland, one; Lincoln, one; Berkshire, two.]

Counties to be districts, until, etc.

II. The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz.: there shall be a meeting on the [first Monday in April,] annually, forever, of the inhabitants of each town in the several counties of this commonwealth; to be called by the selectmen, and warned in due course of law, at least seven days before the [first Monday in April,] for the purpose of electing persons to be senators and councillors; [and at such meetings every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant.] And to remove all doubts concerning the meaning of the word “inhabitant” in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office, or place within this state, in that town, district, or plantation where he dwelleth, or hath his home.

Manner and time of choosing senators and councillors. See amendments, Arts. X. and XV. As to cities, see amendments, Art. II. Provisions as to qualifications of voters, superseded by amendments, Arts. III., XX., XXVIII., XXX., XXXI. and XXXII. Word “inhabitant” defined. See also amendments, Art. XXIII., which was annulled by Art. XXVI. 12 Gray, 21. 122 Mass. 506, 507.

The selectmen of the several towns shall preside at such meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for senators, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectmen, and in open town meeting, of the name of every person voted for, and of the number of votes against his name: and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the secretary of the commonwealth for the time being, with a superscription, expressing the purport

Selectmen to preside at town meetings.

Return of votes.

As to cities, see amendments, Art. II.

Time changed
to first Wednes-
day of January.
See amend-
ments, Art. X.

Inhabitants of
unincorporated
plantations,
who pay state
taxes, may vote.

Plantation
meetings.
Time of elec-
tion changed by
amendments,
Art. XV.
Assessors to
notify, etc.

Governor and
council to ex-
amine and count
votes, and issue
summonses.
Time changed
to first Wednes-
day in January
by amendments,
Art. X.
Majority
changed to
plurality by
amendments,
Art. XIV.

Senate to be
final judge of
elections, etc.,

of the contents thereof, and delivered by the town clerk of such towns, to the sheriff of the county in which such town lies, thirty days at least before [the last Wednesday in May] annually; or it shall be delivered into the secretary's office seventeen days at least before the said [last Wednesday in May:] and the sheriff of each county shall deliver all such certificates by him received, into the secretary's office, seventeen days before the said [last Wednesday in May.]

And the inhabitants of plantations unincorporated, qualified as this constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for councillors and senators in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually [on the same first Monday in April], at such place in the plantations, respectively, as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this constitution. And all other persons living in places unincorporated (qualified as aforesaid) who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of giving in their votes for councillors and senators in the town where they shall be assessed, and be notified of the place of meeting by the selectmen of the town where they shall be assessed, for that purpose, accordingly.

III. And that there may be a due convention of senators on the [last Wednesday in May] annually, the governor with five of the council, for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day he shall issue his summons to such persons as shall appear to be chosen by [a majority of] voters, to attend on that day, and take their seats accordingly: provided, nevertheless, that for the first year the said returned copies shall be examined by the president and five of the council of the former constitution of government; and the said president shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.

IV. The senate shall be the final judge of the elections, returns and qualifications of their own members, as

pointed out in the constitution; and shall, [on the said last Wednesday in May] annually, determine and declare who are elected by each district to be senators [by a majority of votes; and in case there shall not appear to be the full number of senators returned elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, viz.: The members of the house of representatives, and such senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of senators wanting, if there be so many voted for; and out of these shall elect by ballot a number of senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the commonwealth; and in like manner all vacancies in the senate, arising by death, removal out of the state, or otherwise, shall be supplied as soon as may be, after such vacancies shall happen.]

of its own members.
Time changed to first Wednesday of January by amendments, Art. X.
Majority changed to plurality by amendments, Art. XIV.

Vacancies, how filled.
Changed to election by people.
See amendments, Art. XXIV.

V. Provided, nevertheless, that no person shall be capable of being elected as a senator, [who is not seised in his own right of a freehold, within this commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and] who has not been an inhabitant of this commonwealth for the space of five years immediately preceding his election, and, at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.

Qualifications of a senator.
Property qualification abolished.
See amendments, Art. XIII.
For further provision as to residence, see also amendments, Art. XXII.

VI. The senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

Senate not to adjourn more than two days.

VII. The senate shall choose its own president, appoint its own officers, and determine its own rules of proceedings.

shall choose its officers and establish its rules.

VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives, against any officer or officers of the commonwealth, for misconduct and mal-administration in their offices. But previous to the trial of every impeachment the members of the senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place

shall try all impeachments.

Oath.

Limitation of sentence.

of honor, trust, or profit, under this commonwealth; but the party so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment, according to the laws of the land.

Quorum. See amendments, Arts. XXII. and XXXIII.

IX. [Not less than sixteen members of the senate shall constitute a quorum for doing business.]

CHAPTER I.

SECTION III.

House of Representatives.

Representation of the people.

ARTICLE I. There shall be, in the legislature of this commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

Representatives, by whom chosen. Superseded by amendments, Arts. XII. and XIII., which were also superseded by amendments, Art. XXI. 7 Mass. 523.

II. [And in order to provide for a representation of the citizens of this commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty ratable polls may elect one representative; every corporate town containing three hundred and seventy-five ratable polls may elect two representatives; every corporate town containing six hundred ratable polls may elect three representatives; and proceeding in that manner, making two hundred and twenty-five ratable polls the mean increasing number for every additional representative.

Proviso as to towns having less than 150 ratable polls.

Provided, nevertheless, that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls.]

Towns liable to fine in case, etc.

And the house of representatives shall have power from time to time to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this constitution.

Expenses of travelling to and from the general court, how paid. Annulled by Art. XXXV.

[The expenses of travelling to the general assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can, in the judgment of the house, and does not depart without leave.]

Qualifications of a representative.

III. Every member of the house of representatives shall be chosen by written votes; [and, for one year at

least next preceding his election, shall have been an inhabitant of, and have been seised in his own right of a freehold of the value of one hundred pounds within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds; and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.]

New provision as to residence. See amendments, Art. XXI. Property qualifications abolished by amendments, Art. XIII.

IV. [Every male person, being twenty-one years of age, and resident in any particular town in this commonwealth for the space of one year next preceding, having a freehold estate within the said town of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town.]

Qualifications of a voter. These provisions superseded by amendments, Arts. III., XX., XXVIII., XXX., XXXI. and XXXII. See also amendments, Art. XXIII., which was annulled by Art. XXVI. Representatives, when chosen.

V. [The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.]

Time of election changed by amendments, Art. X., and changed again by amendments, Art. XV.

VI. The house of representatives shall be the grand inquest of this commonwealth; and all impeachments made by them shall be heard and tried by the senate.

House alone can impeach.

VII. All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

House to originate all money bills.

VIII. The house of representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time.

Not to adjourn more than two days.

IX. [Not less than sixty members of the house of representatives shall constitute a quorum for doing business.]

Quorum. See amendments, Arts. XXI. and XXXIII.

X. The house of representatives shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution; shall choose their own speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house. They shall have authority to punish by imprisonment every person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in its presence; or who, in the town where the general court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for any thing said or done in the house; or who shall assault any of them therefor; or who shall assault, or arrest, any witness, or other person, ordered to attend the

To judge of returns, etc., of its own members; to choose its officers and establish its rules, etc.

May punish for certain offences. 14 Gray, 226.

house, in his way in going or returning; or who shall rescue any person arrested by the order of the house.

Privileges of members.

And no member of the house of representatives shall be arrested, or held to bail on mesne process, during his going unto, returning from, or his attending the general assembly.

Senate.
Governor and council may punish.
General limitation.
14 Gray, 226.

XI. The senate shall have the same powers in the like cases; and the governor and council shall have the same authority to punish in like cases: provided, that no imprisonment on the warrant or order of the governor, council, senate, or house of representatives, for either of the above described offences, be for a term exceeding thirty days.

Trial may be by committee, or otherwise.

And the senate and house of representatives may try and determine all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

CHAPTER II.

EXECUTIVE POWER.

SECTION I.

Governor.

Governor.

ARTICLE I. There shall be a supreme executive magistrate, who shall be styled—THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose title shall be—HIS EXCELLENCY.

His title.

To be chosen annually.
Qualifications.
See amendments, Arts. VII. and XXXIV.

II. The governor shall be chosen annually; and no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this commonwealth for seven years next preceding; [and unless he shall at the same time be seised, in his own right, of a freehold, within the commonwealth, of the value of one thousand pounds;] [and unless he shall declare himself to be of the Christian religion.]

By whom chosen, if he have a majority of votes.

Time of election changed by amendments, Art. X., and changed again by amendments, Art. XV.

III. Those persons who shall be qualified to vote for senators and representatives within the several towns of this commonwealth shall, at a meeting to be called for that purpose, on the [first Monday of April] annually, give in their votes for a governor, to the selectmen, who shall preside at such meetings; and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form

a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the [last Wednesday in May]; and the sheriff shall transmit the same to the secretary's office, seventeen days at least before the said [last Wednesday in May]; or the selectmen may cause returns of the same to be made to the office of the secretary of the commonwealth, seventeen days at least before the said day; and the secretary shall lay the same before the senate and the house of representatives on the [last Wednesday in May], to be by them examined; and in case of an election by a [majority] of all the votes returned, the choice shall be by them declared and published; but if no person shall have a [majority] of votes, the house of representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the senate of the two persons so elected; on which the senate shall proceed, by ballot, to elect one, who shall be declared governor.

As to cities, see amendments, Art. II.

Time changed to first Wednesday of January by amendments, Art. X.

Changed to plurality by amendments, Art. XIV.

How chosen, when no person has a plurality.

IV. The governor shall have authority, from time to time, at his discretion, to assemble and call together the councillors of this commonwealth for the time being; and the governor with the said councillors, or five of them at least, shall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, agreeably to the constitution and the laws of the land.

Power of governor, and of governor and council.

V. The governor, with advice of council, shall have full power and authority, during the session of the general court, to adjourn or prorogue the same to any time the two houses shall desire; [and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess;] and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause

May adjourn or prorogue the general court upon request, and convene the same. As to dissolution, see amendments, Art. X.

happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient place within the state.

As to dissolution, see amendments, Art. X.

Governor and council may adjourn the general court in cases, etc., but not exceeding ninety days.

[And the governor shall dissolve the said general court on the day next preceding the last Wednesday in May.]

VI. In cases of disagreement between the two houses, with regard to the necessity, expediency, or time of adjournment or prorogation, the governor, with advice of the council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days, as he shall determine the public good shall require.

Governor to be commander-in-chief.

VII. The governor of this commonwealth, for the time being, shall be the commander-in-chief of the army and navy, and of all the military forces of the state, by sea and land; and shall have full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise, and govern the militia and navy; and, for the special defence and safety of the commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, resist, expel, and pursue, by force of arms, as well by sea as by land, within or without the limits of this commonwealth, and also to kill, slay, and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law-martial, in time of war or invasion, and also in time of rebellion, declared by the legislature to exist, as occasion shall necessarily require; and to take and surprise, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this commonwealth; and that the governor be intrusted with all these and other powers, incident to the offices of captain-general and commander-in-chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land, and not otherwise.

Limitation.

Provided, that the said governor shall not, at any time hereafter, by virtue of any power by this constitution

granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court; except so far as may be necessary to march or transport them by land or water, for the defence of such part of the state to which they cannot otherwise conveniently have access.

VIII. The power of pardoning offences, except such as persons may be convicted of before the senate by an impeachment of the house, shall be in the governor, by and with the advice of council; but no charter of pardon, granted by the governor, with advice of the council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

Governor and council may pardon offences, except, etc.

But not before conviction.
109 Mass. 323.

IX. All judicial officers, [the attorney-general,] the solicitor-general, [all sheriffs,] coroners, [and registers of probate,] shall be nominated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

Judicial officers, etc., how nominated and appointed.
For provisions as to election of attorney-general, see amendments, Art. XVII.

For provision as to election of sheriffs, registers of probate, etc., see amendments, Art. XIX. For provision as to appointment of notaries public, see amendments, Art. IV.

X. The captains and subalterns of the militia shall be elected by the written votes of the train-band and alarm list of their respective companies, [of twenty-one years of age and upwards;] the field officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments; the brigadiers shall be elected, in like manner, by the field officers of their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

Militia officers, how elected.
Limitation of age struck out by amendments, Art. V.

How commissioned.

The legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor, the officers elected.

Election of officers.

The major-generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

Major-generals, how appointed and commissioned.

For provisions as to appointment of a commissary-general, see amendments, Art. IV.

And if the electors of brigadiers, field officers, captains or subalterns, shall neglect or refuse to make such elec-

Vacancies, how filled, in case, etc.

tions, after being duly notified, according to the laws for the time being, then the governor, with advice of council, shall appoint suitable persons to fill such offices.

Officers duly commissioned, how removed. Superseded by amendments, Art. IV.

[And no officer, duly commissioned to command in the militia, shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court-martial, pursuant to the laws of the commonwealth for the time being.]

Adjutants, etc., how appointed.

The commanding officers of regiments shall appoint their adjutants and quartermasters; the brigadiers their brigade-majors; and the major-generals their aids; and the governor shall appoint the adjutant-general.

Army officers, how appointed.

The governor, with advice of council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this commonwealth shall appoint, as also all officers of forts and garrisons.

Organization of militia.

The divisions of the militia into brigades, regiments, and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this commonwealth, until the same shall be altered in pursuance of some future law.

Money, how drawn from the treasury, except, etc. 13 Allen, 593.

XI. No moneys shall be issued out of the treasury of this commonwealth, and disposed of (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the governor for the time being, with the advice and consent of the council, for the necessary defence and support of the commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

All public boards, etc., to make quarterly returns.

XII. All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this commonwealth, and all commanding officers of forts and garrisons within the same, shall once in every three months, officially, and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall

exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

XIII. As the public good requires that the governor should not be under the undue influence of any of the members of the general court by a dependence on them for his support, that he should in all cases act with freedom for the benefit of the public, that he should not have his attention necessarily diverted from that object to his private concerns, and that he should maintain the dignity of the commonwealth in the character of its chief magistrate, it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the general court, after the commencement of this constitution, to establish such salary by law accordingly.

Salary of governor.

Permanent and honorable salaries shall also be established by law for the justices of the supreme judicial court.

Salaries of justices of supreme judicial court.

And if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged, as the general court shall judge proper.

Salaries to be enlarged if insufficient.

CHAPTER II.

SECTION II.

Lieutenant-Governor.

ARTICLE I. There shall be annually elected a lieutenant-governor of the commonwealth of Massachusetts, whose title shall be—HIS HONOR; and who shall be qualified, in point of [religion,][property,] and residence in the commonwealth, in the same manner with the governor; and the day and manner of his election, and the qualifications of the electors, shall be the same as are required in the election of a governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner; [and if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the senate and house of repre-

Lieutenant-governor; his title and qualifications. See amendments, Arts. VII. and XXXIV.

How chosen.

Election by plurality provided for by amendments, Art. XIV.

sentatives, in the same manner as the governor is to be elected, in case no one person shall have a majority of the votes of the people to be governor.]

President of
council
Lieutenant-
governor a
member of,
except, etc.

II. The governor, and in his absence the lieutenant-governor, shall be president of the council, but shall have no vote in council; and the lieutenant-governor shall always be a member of the council, except when the chair of the governor shall be vacant.

Lieutenant-
governor to be
acting governor,
in case, etc.

III. Whenever the chair of the governor shall be vacant, by reason of his death, or absence from the commonwealth, or otherwise, the lieutenant-governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the governor, and shall have and exercise all the powers and authorities, which by this constitution the governor is vested with, when personally present.

CHAPTER II.

SECTION III.

Council, and the Manner of settling Elections by the Legislature.

Council.
Number of
councillors
changed to
eight.
See amend-
ments, Art.
XVI.

ARTICLE I. There shall be a council for advising the governor in the executive part of the government, to consist of [nine] persons besides the lieutenant-governor, whom the governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together; and the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, according to the laws of the land.

Number; from
whom, and how
chosen.
Modified by
amendments,
Art. X. and
XIII.
Superseded by
amendments,
Art. XVI.

II. [Nine councillors shall be annually chosen from among the persons returned for councillors and senators, on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room; and in case there shall not be found upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of senators left shall constitute the senate for the year. The seats of the persons thus elected from the senate, and accepting the trust, shall be vacated in the senate.]

If senators be-
come coun-
cillors, their seats
to be vacated.

III. The councillors, in the civil arrangements of the commonwealth, shall have rank next after the lieutenant-governor.

Rank of
councillors.

IV. [Not more than two councillors shall be chosen out of any one district of this commonwealth.]

No district to
have more than
two.

Superseded by amendments, Art. XVI.

V. The resolutions and advice of the council shall be recorded in a register, and signed by the members present; and this record may be called for at any time by either house of the legislature; and any member of the council may insert his opinion, contrary to the resolution of the majority.

Register of
council.

VI. Whenever the office of the governor and lieutenant-governor shall be vacant, by reason of death, absence, or otherwise, then the council, or the major part of them, shall, during such vacancy, have full power and authority to do, and execute, all and every such acts, matters, and things, as the governor or the lieutenant-governor might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present.

Council to exer-
cise the power
of governor in
case, etc.

VII. [And whereas the elections appointed to be made, by this constitution, on the last Wednesday in May annually, by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed. And the order of elections shall be as follows: the vacancies in the senate, if any, shall first be filled up; the governor and lieutenant-governor shall then be elected, provided there should be no choice of them by the people; and afterwards the two houses shall proceed to the election of the council.]

Elections may
be adjourned
until, etc.

Order thereof.
Superseded by
amendments,
Arts. XVI. and
XXV.

CHAPTER II.

SECTION IV.

Secretary, Treasurer, Commissary, etc.

ARTICLE I. [The secretary, treasurer and receiver-general, and the commissary-general, notaries public, and] naval officers, shall be chosen annually, by joint ballot of the senators and representatives in one room. And, that the citizens of this commonwealth may be assured, from time to time, that the moneys remaining in the public treasury, upon the settlement and liquidation of the pub-

Secretary, etc.,
by whom and
how chosen.
For provision as
to election of
secretary, treas-
urer and re-
ceiver-general,
and auditor and
attorney-gen-
eral, see amend-
ments, Art.
XVII.

Treasurer ineligible for more than five successive years.

lic accounts, are their property, no man shall be eligible as treasurer and receiver-general more than five years successively.

For provision as to appointment of notaries public and the commissary-general, see amendments, Art. IV.

Secretary to keep records; to attend the governor and council, etc.

II. The records of the commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable; and he shall attend the governor and council, the senate and house of representatives, in person, or by his deputies, as they shall respectively require.

CHAPTER III.

JUDICIARY POWER.

Tenure of all commissioned officers to be expressed. Judicial officers to hold office during good behavior, except, etc. But may be removed on address.

ARTICLE I. The tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature.

Justices of supreme judicial court to give opinions when required. 123 Mass. 600. 126 Mass. 557, 561.

II. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

Justices of the peace; tenure of their office. 3 Cush. 584.

III. In order that the people may not suffer from the long continuance in place of any justice of the peace who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and, upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well-being of the commonwealth.

For removal of justices of the peace, see amendments, Art. XXXVII.

Provisions for holding probate courts. 13 Gray, 147.

IV. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the legislature shall, from time to time, hereafter, appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

V. All causes of marriage, divorce, and alimony, and all appeals from the judges of probate, shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.

Marriage, divorce, and alimony. Other provisions made by law. 105 Mass. 327. 116 Mass. 317.

CHAPTER IV.

DELEGATES TO CONGRESS.

[The delegates of this commonwealth to the congress of the United States, shall, some time in the month of June, annually, be elected by the joint ballot of the senate and house of representatives, assembled together in one room ; to serve in congress for one year, to commence on the first Monday in November then next ensuing. They shall have commissions under the hand of the governor, and the great seal of the commonwealth ; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.]

Delegates to congress.

CHAPTER V.

THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE, ETC.

SECTION I.

The University.

ARTICLE I. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of GOD, been initiated in those arts and sciences which qualified them for public employments, both in church and state ; and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of GOD, the advantage of the Christian religion, and the great benefit of this and the other United States of America, — it is declared, that the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise, and enjoy, all the powers, authorities, rights, liberties, privileges, immunities, and franchises, which they now have, or are entitled

Harvard College.

Powers, privileges, etc., of the president and fellows, confirmed.

to have, hold, use, exercise, and enjoy; and the same are hereby ratified and confirmed unto them, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

All gifts,
grants, etc.,
confirmed.

II. And whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies, and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the president and fellows of Harvard College, or to the said college by some other description, under several charters, successively; it is declared, that all the said gifts, grants, devises, legacies, and conveyances, are hereby forever confirmed unto the president and fellows of Harvard College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

Who shall be
overseers.

See Statutes,
1851, 224.
1852, 27.
1856, 212.
1856, 173.
1890, 66.

Power of altera-
tion reserved to
the legislature.

III. And whereas, by an act of the general court of the colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy-governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said act described, constituted the overseers of Harvard College; and it being necessary, in this new constitution of government to ascertain who shall be deemed successors to the said governor, deputy-governor, and magistrates; it is declared, that the governor, lieutenant-governor, council, and senate of this commonwealth, are, and shall be deemed, their successors, who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the overseers of Harvard College; provided, that nothing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said university, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late Province of the Massachusetts Bay.

CHAPTER V.

SECTION II.

The Encouragement of Literature, etc.

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments, among the people.

Duty of legislatures and magistrates in all future periods. For further provisions as to public schools, see amendments, Art. XVIII. 12 Allen, 500-503. 103 Mass. 94, 97.

CHAPTER VI.

OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF AND EXCLUSION FROM OFFICES; PECUNIARY QUALIFICATIONS; COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS; THE ENACTING STYLE; CONTINUANCE OF OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE CONSTITUTION, ETC.

ARTICLE I. [Any person chosen governor, lieutenant-governor, councillor, senator, or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz. :

"I, A. B., do declare, that I believe the Christian religion, and have a firm persuasion of its truth; and that I am seised and possessed, in my own right, of the property required by the constitution, as one qualification for the office or place to which I am elected."

And the governor, lieutenant-governor, and councillors, shall make and subscribe the said declaration, in the pres-

Oaths, etc.

Abolished. See amendments, Art. VII.

ence of the two houses of assembly ; and the senators and representatives, first elected under this constitution, before the president and five of the council of the former constitution ; and forever afterwards before the governor and council for the time being.]

Declaration and oaths of all officers.

And every person chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, viz. :

For new oath of allegiance, see amendments, Art. VI.

[“ I, A. B., do truly and sincerely acknowledge, profess, testify, and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign, and independent state ; and I do swear, that I will bear true faith and allegiance to the said commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever ; and that I do renounce and abjure all allegiance, subjection, and obedience to the king, queen, or government of Great Britain (as the case may be), and every other foreign power whatsoever ; and that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing or other power, in any matter, civil, ecclesiastical, or spiritual, within this commonwealth, except the authority and power which is or may be vested by their constituents in the congress of the United States : and I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration, or affirmation ; and that I do make this acknowledgment, profession, testimony, declaration, denial, renunciation, and abjuration, heartily and truly, according to the common meaning and acceptance of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me, God.”]

Oath of office.

“ I, A. B., do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as _____, according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution and the laws of the commonwealth. So help me, God.”

Proviso. See amendments, Art. VI.

Provided, always, that when any person chosen or appointed as aforesaid, shall be of the denomination of the

people called Quakers, and shall decline taking the said oath[s], he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words, [*"I do swear," "and abjure," "oath or," "and abjuration,"* in the first oath, and in the second oath, the words] *"swear and,"* and [in each of them] the words *"So help me, God;"* subjoining instead thereof, *"This I do under the pains and penalties of perjury."*

And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant-governor, and councillors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons and in such manner as from time to time shall be prescribed by the legislature.

Oaths and affirmations, how administered.

II. No governor, lieutenant-governor, or judge of the supreme judicial court, shall hold any other office or place, under the authority of this commonwealth, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justices of the peace through the state; nor shall they hold any other place or office, or receive any pension or salary from any other state or government or power whatever.

Plurality of offices prohibited to governor, etc., except, etc. See amendments, Art. VIII.

No person shall be capable of holding or exercising at the same time, within this state, more than one of the following offices, viz.: judge of probate—sheriff—register of probate—or register of deeds; and never more than any two offices, which are to be held by appointment of the governor, or the governor and council, or the senate, or the house of representatives, or by the election of the people of the state at large, or of the people of any county, military offices, and the offices of justices of the peace excepted, shall be held by one person.

Same subject. 1 Allen, 553.

No person holding the office of judge of the supreme judicial court—secretary—attorney-general—solicitor-general—treasurer or receiver-general—judge of probate—commissary-general—[president, professor, or instructor of Harvard College]—sheriff—clerk of the house of representatives—register of probate—register of deeds—clerk of the supreme judicial court—clerk of the inferior court of common pleas—or officer of the customs, including in this description naval officers—shall at the

Incompatible offices. For further provisions as to incompatible offices, see amendments, Art. VIII. Officers of Harvard College excepted by amendments, Art. XXVII.

same time have a seat in the senate or house of representatives ; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the senate or house of representatives ; and the place so vacated shall be filled up.

Incompatible
offices.

And the same rule shall take place in case any judge of the said supreme judicial court, or judge of probate, shall accept a seat in council ; or any councillor shall accept of either of those offices or places.

Bribery, etc.,
disqualify.

And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption in obtaining an election or appointment.

Value of money
ascertained.

Property qual-
fications may
be increased.
See amend-
ments, Arts.
XIII. and
XXXIV.

III. In all cases where sums of money are mentioned in this constitution, the value thereof shall be computed in silver, at six shillings and eight pence per ounce ; and it shall be in the power of the legislature, from time to time, to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the commonwealth shall require.

Provisions
respecting
commissions.

IV. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the governor and attested by the secretary or his deputy, and have the great seal of the commonwealth affixed thereto.

Provisions re-
specting writs.
2 Pick. 592.
3 Met. 58.
13 Gray, 74.

V. All writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts ; they shall be under the seal of the court from whence they issue ; they shall bear test of the first justice of the court to which they shall be returnable, who is not a party, and be signed by the clerk of such court.

Continuation of
former laws,
except, etc.
1 Mass. 59.
2 Mass. 534.
8 Pick. 309, 316.
16 Pick. 107, 115.
2 Met. 118.

VI. All the laws which have heretofore been adopted, used, and approved in the Province, Colony, or State of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature ; such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

Benefit of
habeas corpus
secured, except,
etc.

VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this commonwealth, in the most free, easy, cheap, expeditious, and ample manner ; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months.

VIII. The enacting style, in making and passing all acts, statutes, and laws, shall be — “Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same.”

The enacting style.

IX. To the end there may be no failure of justice, or danger arise to the commonwealth from a change of the form of government, all officers, civil and military, holding commissions under the government and people of Massachusetts Bay in New England, and all other officers of the said government and people, at the time this constitution shall take effect, shall have, hold, use, exercise, and enjoy, all the powers and authority to them granted or committed, until other persons shall be appointed in their stead; and all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies, and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority; until the general court, and the supreme and executive officers under this constitution, are designated and invested with their respective trusts, powers, and authority.

Officers of former government continued until, etc.

X. [In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary, the general court which shall be in the year of our Lord one thousand seven hundred and ninety-five, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution, in order to amendments.

Provision for revising constitution. For existing provision as to amendments, see amendments, Art. IX.

And if it shall appear, by the returns made, that two-thirds of the qualified voters throughout the state, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the general court shall issue precepts, or direct them to be issued from the secretary's office, to the several towns to elect delegates to meet in convention for the purpose aforesaid.

Provision for revising constitution.

The said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the legislature are by this constitution to be chosen.]

Provision for
preserving and
publishing this
constitution.

XI. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land ; and printed copies thereof shall be prefixed to the book containing the laws of this commonwealth, in all future editions of the said laws.

ARTICLES OF AMENDMENT.

Bill, etc., not
approved within
five days, not to
become a law,
if legislature
adjourn in the
mean time.
3 Mass. 567.
See Const., Ch.
I., § 1, Art. II.

ARTICLE I. If any bill or resolve shall be objected to, and not approved by the governor ; and if the general court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution, such bill or resolve shall not become a law, nor have force as such.

General court
empowered to
charter cities.
122 Mass. 354.

ART. II. The general court shall have full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this commonwealth, and to grant to the inhabitants thereof such powers, privileges, and immunities, not repugnant to the constitution, as the general court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings. Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants, nor unless it be with the consent, and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose. And provided, also, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the general court.

Proviso.
112 Mass. 200.

Qualifications of
voters for gov-
ernor, lieuten-
ant-governor,
senators and
representatives.
See amend-
ments, Arts.
XXX, XXXII,
and XL.
11 Pick. 538, 540.
14 Pick. 341.
14 Mass. 367.
5 Met. 162, 298,
591, 594.

ART. III. Every male citizen of twenty-one years of age and upwards, excepting paupers and persons under guardianship, who shall have resided within the commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant-governor, senators, or representatives, [and who shall have paid, by himself, or his parent, master, or guardian, any state

or county tax, which shall, within two years next preceding such election, have been assessed upon him, in any town or district of this commonwealth; and also every citizen who shall be, by law, exempted from taxation, and who shall be, in all other respects, qualified as above mentioned,] shall have a right to vote in such election of governor, lieutenant-governor, senators, and representatives; and no other person shall be entitled to vote in such election.

See also amendments, Art. XXIII., which was annulled by amendments, Art. XXVI.

ART. IV. Notaries public shall be appointed by the governor in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the council, upon the address of both houses of the legislature.

[In case the office of secretary or treasurer of the commonwealth shall become vacant from any cause, during the recess of the general court, the governor, with the advice and consent of the council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the general court.]

Whenever the exigencies of the commonwealth shall require the appointment of a commissary-general, he shall be nominated, appointed, and commissioned, in such manner as the legislature may, by law, prescribe.

All officers commissioned to command in the militia may be removed from office in such manner as the legislature may, by law, prescribe.

ART. V. In the elections of captains and subalterns of the militia, all the members of their respective companies, as well those under as those above the age of twenty-one years, shall have a right to vote.

ART. VI. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this commonwealth, before he shall enter on the duties of his office, to wit:—

“I, A. B., do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So help me, God.”

7 Gray, 299.
122 Mass. 595,
597.
124 Mass. 596.
For educational
qualification,
see amend-
ments, Art. XX.
For provision
as to those who
have served in
the army or
navy in time
of war, see
amendments,
Arts. XXVIII.
and XXXI.

Notaries public,
how appointed
and removed.

See amend-
ments, Art.
XXXVII.

Vacancies in the
offices of secre-
tary and treas-
urer, how filled.
This clause
superseded by
amendments,
Art. XVII.

Commissary-
general may be
appointed, in
case, etc.

Militia officers,
how removed.

Who may vote
for captains and
subalterns.

Oath to be taken
by all officers.
See Const.,
Ch. VI., Art. I.

Proviso.
Quakers may
affirm.

Provided, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear" and inserting, instead thereof, the word "affirm," and omitting the words "So help me, God," and subjoining, instead thereof, the words, "This I do under the pains and penalties of perjury."

Tests abolished.

ART. VII. No oath, declaration, or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant-governor, councillors, senators, or representatives, to qualify them to perform the duties of their respective offices.

Incompatibility
of offices.
122 Mass. 445,
600.
123 Mass. 525.

ART. VIII. No judge of any court of this commonwealth, (except the court of sessions,) and no person holding any office under the authority of the United States, (postmasters excepted,) shall, at the same time, hold the office of governor, lieutenant-governor, or councillor, or have a seat in the senate or house of representatives of this commonwealth; and no judge of any court in this commonwealth, (except the court of sessions,) nor the attorney-general, solicitor-general, county attorney, clerk of any court, sheriff, treasurer and receiver-general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the Congress of the United States, and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office; and judges of the courts of common pleas shall hold no other office under the government of this commonwealth, the office of justice of the peace and militia offices excepted.

Amendments to
constitution,
how made.

ART. IX. If, at any time hereafter, any specific and particular amendment or amendments to the constitution be proposed in the general court, and agreed to by a majority of the senators and two-thirds of the members of the house of representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the general court then next to be chosen, and shall be published; and if, in the general court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two-thirds of the members of the house of representatives present and voting thereon, then it shall be the duty of the general court to submit such proposed

amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this commonwealth.

ART. X. The political year shall begin on the first Wednesday of January, instead of the last Wednesday of May; and the general court shall assemble every year on the said first Wednesday of January, and shall proceed, at that session, to make all the elections, and do all the other acts, which are by the constitution required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the general court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the governor. But nothing herein contained shall prevent the general court from assembling at such other times as they shall judge necessary, or when called together by the governor. The governor, lieutenant-governor and councillors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

Commencement
of political
year,

and termina-
tion.

[The meeting for the choice of governor, lieutenant-governor, senators, and representatives, shall be held on the second Monday of November in every year; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.]

Meetings for the
choice of gov-
ernor, lieuten-
ant-governor,
etc., when to be
held.
This clause
superseded by
amendments,
Art. XV.

All the other provisions of the constitution, respecting the elections and proceedings of the members of the general court, or of any other officers or persons whatever, that have reference to the last Wednesday of May, as the commencement of the political year, shall be so far altered, as to have like reference to the first Wednesday of January.

This article shall go into operation on the first day of October, next following the day when the same shall be duly ratified and adopted as an amendment of the constitution; and the governor, lieutenant-governor, councillors, senators, representatives, and all other state officers, who are annually chosen, and who shall be chosen for the current year, when the same shall go into operation, shall hold their respective offices until the first Wednesday of

Article, when
to go into
operation.

January then next following, and until others are chosen and qualified in their stead, and no longer; and the first election of the governor, lieutenant-governor, senators, and representatives, to be had in virtue of this article, shall be had conformably thereunto, in the month of November following the day on which the same shall be in force, and go into operation, pursuant to the foregoing provision.

Inconsistent provisions annulled.

All the provisions of the existing constitution, inconsistent with the provisions herein contained, are hereby wholly annulled.

Religious freedom established. See Dec. of Rights, Art. III.

ART. XI. Instead of the third article of the bill of rights, the following modification and amendment thereof is substituted:—

“As the public worship of God and instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses; and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made, or entered into by such society; and all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.”

122 Mass. 40, 41.

Census of ratable polls to be taken in 1837, and decennially thereafter. This article was superseded by amendments, Art. XIII, which was also superseded by amendments, Art. XXI. Representatives, how apportioned.

ART. XII. [In order to provide for a representation of the citizens of this commonwealth, founded upon the principles of equality, a census of the ratable polls, in each city, town, and district of the commonwealth, on the first day of May, shall be taken and returned into the secretary's office, in such manner as the legislature shall provide, within the month of May, in the year of our Lord one thousand eight hundred and thirty-seven, and in every tenth year thereafter, in the month of May, in manner aforesaid; and each town or city having three hundred rata-

ble polls at the last preceding decennial census of polls, may elect one representative, and for every four hundred and fifty ratable polls in addition to the first three hundred, one representative more.

Any town having less than three hundred ratable polls shall be represented thus: The whole number of ratable polls, at the last preceding decennial census of polls, shall be multiplied by ten, and the product divided by three hundred; and such town may elect one representative as many years within ten years, as three hundred is contained in the product aforesaid.

Towns having less than 300 ratable polls, how represented.

Any city or town having ratable polls enough to elect one or more representatives, with any number of polls beyond the necessary number, may be represented, as to that surplus number, by multiplying such surplus number by ten and dividing the product by four hundred and fifty; and such city or town may elect one additional representative as many years, within the ten years, as four hundred and fifty is contained in the product aforesaid.

Fractions, how represented.

Any two or more of the several towns and districts may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns and districts, respectively, called for that purpose, and held previous to the first day of July, in the year in which the decennial census of polls shall be taken, form themselves into a representative district to continue until the next decennial census of polls, for the election of a representative, or representatives; and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of ratable polls.

Towns may unite into representative districts.

The governor and council shall ascertain and determine, within the months of July and August, in the year of our Lord one thousand eight hundred and thirty-seven, according to the foregoing principles, the number of representatives, which each city, town, and representative district is entitled to elect, and the number of years, within the period of ten years then next ensuing, that each city, town, and representative district may elect an additional representative; and where any town has not a sufficient number of polls to elect a representative each year, then, how many years within the ten years, such town may elect a representative; and the same shall be done once in ten years, thereafter, by the governor and council, and the number of ratable polls in each decennial census of polls, shall determine the number of representatives, which each

The governor and council to determine the number of representatives to which each town is entitled.

New apportionment to be made once in every ten years.

city, town and representative district may elect as aforesaid; and when the number of representatives to be elected by each city, town, or representative district is ascertained and determined as aforesaid, the governor shall cause the same to be published forthwith for the information of the people, and that number shall remain fixed and unalterable for the period of ten years.

Inconsistent provisions annulled.

All the provisions of the existing constitution inconsistent with the provisions herein contained, are hereby wholly annulled.]

Census of inhabitants to be taken in 1840, and decennially thereafter, for basis of representation. Provisions as to census superseded by amendments, Arts. XXI. and XXII.

ART. XIII. [A census of the inhabitants of each city and town, on the first day of May, shall be taken, and returned into the secretary's office, on or before the last day of June, of the year one thousand eight hundred and forty, and of every tenth year thereafter; which census shall determine the apportionment of senators and representatives for the term of ten years. 122 Mass. 596.]

Senatorial districts declared permanent. Provisions as to senators superseded by amendments, Art. XXII.

The several senatorial districts now existing shall be permanent. The senate shall consist of forty members; and in the year one thousand eight hundred and forty, and every tenth year thereafter, the governor and council shall assign the number of senators to be chosen in each district, according to the number of inhabitants in the same. But, in all cases, at least one senator shall be assigned to each district.

House of representatives, how apportioned. Provisions as to representatives superseded by amendments, Art. XXI.

The members of the house of representatives shall be apportioned in the following manner: Every town or city containing twelve hundred inhabitants may elect one representative; and two thousand four hundred inhabitants shall be the mean increasing number, which shall entitle it to an additional representative.

Small towns, how represented.

Every town containing less than twelve hundred inhabitants shall be entitled to elect a representative as many times within ten years as the number one hundred and sixty is contained in the number of the inhabitants of said town. Such towns may also elect one representative for the year in which the valuation of estates within the commonwealth shall be settled.

Towns may unite into representative districts.

Any two or more of the several towns may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns, respectively, called for that purpose, and held before the first day of August, in the year one thousand eight hundred and forty, and every tenth year thereafter, form themselves into a representative district, to continue for the term of ten years; and

such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of inhabitants.

The number of inhabitants which shall entitle a town to elect one representative, and the mean increasing number which shall entitle a town or city to elect more than one, and also the number by which the population of towns not entitled to a representative every year is to be divided, shall be increased, respectively, by one-tenth of the numbers above mentioned, whenever the population of the commonwealth shall have increased to seven hundred and seventy thousand, and for every additional increase of seventy thousand inhabitants, the same addition of one-tenth shall be made, respectively, to the said numbers above mentioned.

Basis of representation, and ratio of increase.

In the year of each decennial census, the governor and council shall, before the first day of September, apportion the number of representatives which each city, town, and representative district is entitled to elect, and ascertain how many years, within ten years, any town may elect a representative, which is not entitled to elect one every year; and the governor shall cause the same to be published forthwith.

The governor and council to apportion the number of representatives of each town once in every ten years.

Nine councillors shall be annually chosen from among the people at large, on the first Wednesday of January, or as soon thereafter as may be, by the joint ballot of the senators and representatives, assembled in one room, who shall, as soon as may be, in like manner, fill up any vacancies that may happen in the council, by death, resignation, or otherwise. No person shall be elected a councillor, who has not been an inhabitant of this commonwealth for the term of five years immediately preceding his election; and not more than one councillor shall be chosen from any one senatorial district in the commonwealth.]

Councillors to be chosen from the people at large. Provisions as to councillors superseded by amendments, Art. XVI.

Qualifications of councillors.

No possession of a freehold, or of any other estate, shall be required as a qualification for holding a seat in either branch of the general court, or in the executive council.

Freehold as a qualification for a seat in general court or council not required.

ART. XIV. In all elections of civil officers by the people of this commonwealth, whose election is provided for by the constitution, the person having the highest number of votes shall be deemed and declared to be elected.

Elections by the people to be by plurality of votes.

ART. XV. The meeting for the choice of governor, lieutenant-governor, senators, and representatives, shall be held on the Tuesday next after the first Monday in November, annually; but in case of a failure to elect rep-

Time of annual election of governor and legislature.

representatives on that day, a second meeting shall be holden, for that purpose, on the fourth Monday of the same month of November.

Eight councillors to be chosen by the people. 122 Mass. 505, 598.

Legislature to district state.

Eligibility defined.

Day and manner of election, etc.

Vacancies, how filled. For new provision as to vacancies, see amendments, Art. XXV.

Organization of the government.

ART. XVI. Eight councillors shall be annually chosen by the inhabitants of this commonwealth, qualified to vote for governor. The election of councillors shall be determined by the same rule that is required in the election of governor. The legislature, at its first session after this amendment shall have been adopted, and at its first session after the next state census shall have been taken, and at its first session after each decennial state census thereafterwards, shall divide the commonwealth into eight districts of contiguous territory, each containing a number of inhabitants as nearly equal as practicable, without dividing any town or ward of a city, and each entitled to elect one councillor: *provided, however*, that if, at any time, the constitution shall provide for the division of the commonwealth into forty senatorial districts, then the legislature shall so arrange the councillor districts, that each district shall consist of five contiguous senatorial districts, as they shall be, from time to time, established by the legislature. No person shall be eligible to the office of councillor who has not been an inhabitant of the commonwealth for the term of five years immediately preceding his election. The day and manner of the election, the return of the votes, and the declaration of the said elections, shall be the same as are required in the election of governor. [Whenever there shall be a failure to elect the full number of councillors, the vacancies shall be filled in the same manner as is required for filling vacancies in the senate; and vacancies occasioned by death, removal from the state, or otherwise, shall be filled in like manner, as soon as may be, after such vacancies shall have happened.] And that there may be no delay in the organization of the government on the first Wednesday of January, the governor, with at least five councillors for the time being, shall, as soon as may be, examine the returned copies of the records for the election of governor, lieutenant-governor, and councillors; and ten days before the said first Wednesday in January he shall issue his summons to such persons as appear to be chosen, to attend on that day to be qualified accordingly; and the secretary shall lay the returns before the senate and house of representatives on the said first Wednesday in January, to be by them examined; and in case of the election of either of said officers, the choice

shall be by them declared and published ; but in case there shall be no election of either of said officers, the legislature shall proceed to fill such vacancies in the manner provided in the constitution for the choice of such officers.

ART. XVII. The secretary, treasurer and receiver-general, auditor, and attorney-general, shall be chosen annually, on the day in November prescribed for the choice of governor ; and each person then chosen as such, duly qualified in other respects, shall hold his office for the term of one year from the third Wednesday in January next thereafter, and until another is chosen and qualified in his stead. The qualification of the voters, the manner of the election, the return of the votes, and the declaration of the election, shall be such as are required in the election of governor. In case of a failure to elect either of said officers on the day in November aforesaid, or in case of the decease, in the mean time, of the person elected as such, such officer shall be chosen on or before the third Wednesday in January next thereafter, from the two persons who had the highest number of votes for said offices on the day in November aforesaid, by joint ballot of the senators and representatives, in one room ; and in case the office of secretary, or treasurer and receiver-general, or auditor, or attorney-general, shall become vacant, from any cause, during an annual or special session of the general court, such vacancy shall in like manner be filled by choice from the people at large ; but if such vacancy shall occur at any other time, it shall be supplied by the governor by appointment, with the advice and consent of the council. The person so chosen or appointed, duly qualified in other respects, shall hold his office until his successor is chosen and duly qualified in his stead. In case any person chosen or appointed to either of the offices aforesaid, shall neglect, for the space of ten days after he could otherwise enter upon his duties, to qualify himself in all respects to enter upon the discharge of such duties, the office to which he has been elected or appointed shall be deemed vacant. No person shall be eligible to either of said offices unless he shall have been an inhabitant of this commonwealth five years next preceding his election or appointment.

Election of secretary, treasurer, auditor, and attorney-general by the people.

Vacancies, how filled.

To qualify within ten days, otherwise office to be deemed vacant.

Qualification requisite.

ART. XVIII. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools, shall be applied to, and

School moneys not to be applied for sectarian schools. For original provision as to

schools, see constitution, Part First, Art. III.
12 Allen, 500, 508.
103 Mass. 94, 96.

Legislature to prescribe for the election of sheriffs, registers of probate, etc. See amendments, Art. XXXVI.
8 Gray, 1.
18 Gray, 74.

Reading constitution in English and writing, necessary qualifications of voters. *Proviso.*
For other qualifications, see amendments, Art. III.
See also amendments, Art. XXIII., which was annulled by amendments, Art. XXVI.

Census of legal voters and of inhabitants, when taken, etc. See P. S. c. 81.

House of representatives to consist of 240 members. Legislature to apportion, etc.
10 Gray, 618.

expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own school.

ART. XIX. The legislature shall prescribe, by general law, for the election of sheriffs, registers of probate, [commissioners of insolvency,] and clerks of the courts, by the people of the several counties, and that district-attorneys shall be chosen by the people of the several districts, for such term of office as the legislature shall prescribe.

110 Mass. 172, 178.

117 Mass. 602, 603.

121 Mass. 65.

ART. XX. No person shall have the right to vote, or be eligible to office under the constitution of this commonwealth, who shall not be able to read the constitution in the English language, and write his name: *provided, however*, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any persons who shall be sixty years of age or upwards at the time this amendment shall take effect.

ART. XXI. A census of the legal voters of each city and town, on the first day of May, shall be taken and returned into the office of the secretary of the commonwealth, on or before the last day of June, in the year one thousand eight hundred and fifty-seven; and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five, and of every tenth year thereafter. In the census aforesaid, a special enumeration shall be made of the legal voters; and in each city, said enumeration shall specify the number of such legal voters aforesaid, residing in each ward of such city. The enumeration aforesaid shall determine the apportionment of representatives for the periods between the taking of the census.

The house of representatives shall consist of two hundred and forty members, which shall be apportioned by the legislature, at its first session after the return of each enumeration as aforesaid, to the several counties of the commonwealth, equally, as nearly as may be, according to their relative numbers of legal voters, as ascertained by the next preceding special enumeration; and the town of Cohasset, in the county of Norfolk, shall, for this pur-

pose, as well as in the formation of districts, as hereinafter provided, be considered a part of the county of Plymouth ; and it shall be the duty of the secretary of the commonwealth, to certify, as soon as may be after it is determined by the legislature, the number of representatives to which each county shall be entitled, to the board authorized to divide each county into representative districts. The mayor and aldermen of the city of Boston, the county commissioners of other counties than Suffolk, — or in lieu of the mayor and aldermen of the city of Boston, or of the county commissioners in each county other than Suffolk, such board of special commissioners in each county, to be elected by the people of the county, or of the towns therein, as may for that purpose be provided by law, — shall, on the first Tuesday of August next after each assignment of representatives to each county, assemble at a shire town of their respective counties, and proceed, as soon as may be, to divide the same into representative districts of contiguous territory, so as to apportion the representation assigned to each county equally, as nearly as may be, according to the relative number of legal voters in the several districts of each county ; and such districts shall be so formed that no town or ward of a city shall be divided therefor, nor shall any district be made which shall be entitled to elect more than three representatives. Every representative, for one year at least next preceding his election, shall have been an inhabitant of the district for which he is chosen, and shall cease to represent such district when he shall cease to be an inhabitant of the commonwealth. The districts in each county shall be numbered by the board creating the same, and a description of each, with the numbers thereof and the number of legal voters therein, shall be returned by the board, to the secretary of the commonwealth, the county treasurer of each county, and to the clerk of every town in each district, to be filed and kept in their respective offices. The manner of calling and conducting the meetings for the choice of representatives, and of ascertaining their election, shall be prescribed by law. [Not less than one hundred members of the house of representatives shall constitute a quorum for doing business ; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.]

ART. XXII. A census of the legal voters of each city and town, on the first day of May, shall be taken and

Secretary shall certify to officers authorized to divide counties.

Meeting for division to be first Tuesday in August. Proceedings.

Qualifications of representatives. 122 Mass. 596, 598.

Districts to be numbered, described and certified.

Quorum, see amendments, Art. XXXIII.

Census, etc. See P. S. c. 31.

Voters to be
basis of appor-
tionment of
senators.

Senate to con-
sist of forty
members.

Senatorial
districts, etc.

See amend-
ments, Art.
XXIV.

Qualifications
of senators.

Quorum, see
amendments,
Art. XXXIII.

Residence of
two years re-
quired of natu-
ralized citizens,
to entitle to suf-
frage or make
eligible to office.
This article
annulled by
Art. XXVI.

Vacancies in the
senate.

returned into the office of the secretary of the commonwealth, on or before the last day of June, in the year one thousand eight hundred and fifty-seven; and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five, and of every tenth year thereafter. In the census aforesaid, a special enumeration shall be made of the legal voters, and in each city said enumeration shall specify the number of such legal voters aforesaid, residing in each ward of such city. The enumeration aforesaid shall determine the apportionment of senators for the periods between the taking of the census. The senate shall consist of forty members. The general court shall, at its first session after each next preceding special enumeration, divide the commonwealth into forty districts of adjacent territory, each district to contain, as nearly as may be, an equal number of legal voters, according to the enumeration aforesaid: *provided, however*, that no town or ward of a city shall be divided therefor; and such districts shall be formed, as nearly as may be, without uniting two counties, or parts of two or more counties, into one district. Each district shall elect one senator, who shall have been an inhabitant of this commonwealth five years at least immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen; and he shall cease to represent such senatorial district when he shall cease to be an inhabitant of the commonwealth. [Not less than sixteen senators shall constitute a quorum for doing business; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.]

ART. XXIII. [No person of foreign birth shall be entitled to vote, or shall be eligible to office, unless he shall have resided within the jurisdiction of the United States for two years subsequent to his naturalization, and shall be otherwise qualified, according to the constitution and laws of this commonwealth: *provided*, that this amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption thereof; and, *provided, further*, that it shall not affect the rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom.]

ART. XXIV. Any vacancy in the senate shall be filled by election by the people of the unrepresented district, upon the order of a majority of the senators elected.

ART. XXV. In case of a vacancy in the council, from a failure of election, or other cause, the senate and house of representatives shall, by concurrent vote, choose some eligible person from the people of the district wherein such vacancy occurs, to fill that office. If such vacancy shall happen when the legislature is not in session, the governor, with the advice and consent of the council, may fill the same by appointment of some eligible person.

Vacancies in the council.

ART. XXVI. The twenty-third article of the articles of amendment of the constitution of this commonwealth, which is as follows, to wit: "No person of foreign birth shall be entitled to vote, or shall be eligible to office, unless he shall have resided within the jurisdiction of the United States for two years subsequent to his naturalization, and shall be otherwise qualified, according to the constitution and laws of this commonwealth: *provided*, that this amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption thereof; and *provided, further*, that it shall not affect the rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom," is hereby wholly annulled.

Twenty-third article of amendments annulled.

ART. XXVII. So much of article two of chapter six of the constitution of this commonwealth as relates to persons holding the office of president, professor, or instructor of Harvard College, is hereby annulled.

Provisions of Art. II., Chap. VI., relating to officers of Harvard College, annulled.

ART. XXVIII. No person having served in the army or navy of the United States in time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of being a pauper; or, if a pauper, because of the non-payment of a poll tax.

Superseded by Art. XXXI.

ART. XXIX. The general court shall have full power and authority to provide for the inhabitants of the towns in this commonwealth more than one place of public meeting within the limits of each town for the election of officers under the constitution, and to prescribe the manner of calling, holding and conducting such meetings. All the provisions of the existing constitution inconsistent with the provisions herein contained are hereby annulled.

Voting precincts in towns.

ART. XXX. No person, otherwise qualified to vote in elections for governor, lieutenant-governor, senators, and representatives, shall, by reason of a change of residence within the commonwealth, be disqualified from voting for said officers in the city or town from which he has removed

Voters not disqualified by reason of change of residence until six months from time of removal.

his residence, until the expiration of six calendar months from the time of such removal.

Amendments,
Art. XXVIII.
amended.

ART. XXXI. Article twenty-eight of the amendments of the constitution is hereby amended by striking out in the fourth line thereof the words "being a pauper", and inserting in place thereof the words:—receiving or having received aid from any city or town,—and also by striking out in said fourth line the words "if a pauper", so that the article as amended shall read as follows: ARTICLE XXVIII. No person having served in the army or navy of the United States in time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of receiving or having received aid from any city or town, or because of the non-payment of a poll tax.

Person who
served in army
or navy, etc.,
not disqualified
from voting for
non-payment of
poll tax.

Provisions of
amendments,
Art. III., rela-
tive to payment
of a tax as a
voting qualifica-
tion, annulled.

ART. XXXII. So much of article three of the amendments of the constitution of the commonwealth as is contained in the following words: "and who shall have paid, by himself, or his parent, master, or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him, in any town or district of this commonwealth; and also every citizen who shall be, by law, exempted from taxation, and who shall be, in all other respects, qualified as above mentioned", is hereby annulled.

Quorum, in each
branch of the
general court,
to consist of a
majority of
members.

ART. XXXIII. A majority of the members of each branch of the general court shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day, and compel the attendance of absent members. All the provisions of the existing constitution inconsistent with the provisions herein contained are hereby annulled.

Provisions of
Art. II., § I.,
Chap. II., Part
II., relative to
property qualifi-
cation of
governor,
annulled.

ART. XXXIV. So much of article two of section one of chapter two of part the second of the constitution of the commonwealth as is contained in the following words: "and unless he shall at the same time be seised, in his own right, of a freehold, within the commonwealth, of the value of one thousand pounds"; is hereby annulled.

Provisions of
Art. II., § III.,
Chap. I., rela-
tive to expense
of travelling to
the general
assembly by
members of the
house, annulled

ART. XXXV. So much of article two of section three of chapter one of the constitution of the commonwealth as is contained in the following words: "The expenses of travelling to the general assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can, in the judg-

ment of the house, and does not depart without leave", is hereby annulled.

ART. XXXVI. So much of article nineteen of the articles of amendment to the constitution of the commonwealth as is contained in the following words: "commissioners of insolvency", is hereby annulled. Amendments,
Art. XIX.,
amended.

ART. XXXVII. The governor, with the consent of the council, may remove justices of the peace and notaries public. Removal of
certain officers.

ART. XXXVIII. Voting machines or other mechanical devices for voting may be used at all elections under such regulations as may be prescribed by law: *provided, however*, that the right of secret voting shall be preserved. Voting
machines may
be used at
elections.

ART. XXXIX. Article ten of part one of the constitution is hereby amended by adding to it the following words: — The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: *provided, however*, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions. Powers of the
legislature
relative to the
taking of land,
etc., for
widening or
relocating
highways, etc.

ART. XL. Article three of the amendments to the constitution is hereby amended by inserting after the word "guardianship", in line two, the following: — and persons temporarily or permanently disqualified by law because of corrupt practices in respect to elections. Proviso.

ART. XLI. Full power and authority are hereby given and granted to the general court to prescribe for wild or forest lands such methods of taxation as will develop and conserve the forest resources of the commonwealth. Amendments,
Art. III.,
amended.

ART. XLII. Full power and authority are hereby given and granted to the general court to refer to the people for their rejection or approval at the polls any act or resolve of the general court or any part or parts thereof. Such reference shall be by a majority yeas and nays vote of all members of each house present and voting. Any act, resolve, or part thereof so referred shall be voted on at the regular state election next ensuing after such refer- Taxation of wild
or forest lands.

at the regular state election next ensuing after such refer- Referendum.

ence, shall become law if approved by a majority of the voters voting thereon, and shall take effect at the expiration of thirty days after the election at which it was approved or at such time after the expiration of the said thirty days as may be fixed in such act, resolve or part thereof.

Powers of the legislature relative to the taking of land, etc., to relieve congestion of population and to provide homes for citizens.
Proviso.

ART. XLIII. The general court shall have power to authorize the commonwealth to take land and to hold, improve, sub-divide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens: *provided, however*, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

Powers of the legislature relative to imposing and levying a tax on income; exemptions, etc.

ART. XLIV. Full power and authority are hereby given and granted to the general court to impose and levy a tax on income in the manner hereinafter provided. Such tax may be at different rates upon income derived from different classes of property, but shall be levied at a uniform rate throughout the commonwealth upon incomes derived from the same class of property. The general court may tax income not derived from property at a lower rate than income derived from property, and may grant reasonable exemptions and abatements. Any class of property the income from which is taxed under the provisions of this article may be exempted from the imposition and levying of proportional and reasonable assessments, rates and taxes as at present authorized by the constitution. This article shall not be construed to limit the power of the general court to impose and levy reasonable duties and excises.

The constitution of Massachusetts was agreed upon by delegates of the people, in convention, begun and held at Cambridge, on the first day of September, 1779, and continued by adjournments to the second day of March, 1780, when the convention adjourned to meet on the first Wednesday of the ensuing June. In the mean time the constitution was submitted to the people, to be adopted by them, provided two-thirds of the votes given should be in the affirmative. When the convention assembled, it was found that the constitution had been adopted by the requisite number of votes, and the convention accordingly *Resolved*, "That the said Constitution or Frame of Government shall take place on the last Wednesday of October next; and not before, for any purpose, save only for that of making elections, agreeable to this resolu-

tion." The first legislature assembled at Boston, on the twenty-fifth day of October, 1780.

The first nine Articles of Amendment were submitted, by delegates in convention assembled, November 15, 1820, to the people, and by them ratified and adopted April 9, 1821.

The tenth Article was adopted by the legislatures of the political years 1829-30 and 1830-31, respectively, and was approved and ratified by the people May 11, 1831.

The eleventh Article was adopted by the legislatures of the political years 1832 and 1833, respectively, and was approved and ratified by the people November 11, 1833.

The twelfth Article was adopted by the legislatures of the political years 1835 and 1836, respectively, and was approved and ratified by the people the fourteenth day of November, 1836.

The thirteenth Article was adopted by the legislatures of the political years 1839 and 1840, respectively, and was approved and ratified by the people the sixth day of April, 1840.

The fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth Articles were adopted by the legislatures of the political years 1854 and 1855, respectively, and ratified by the people the twenty-third day of May, 1855.

The twentieth, twenty-first, and twenty-second Articles were adopted by the legislatures of the political years 1856 and 1857, respectively, and ratified by the people on the first day of May, 1857.

The twenty-third Article was adopted by the legislatures of the political years 1858 and 1859, respectively, and ratified by the people on the ninth day of May, 1859, and was repealed by the twenty-sixth Amendment.

The twenty-fourth and twenty-fifth Articles were adopted by the legislatures of the political years 1859 and 1860, and ratified by the people on the seventh day of May, 1860.

The twenty-sixth Article was adopted by the legislatures of the political years 1862 and 1863, and ratified by the people on the sixth day of April, 1863.

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The twenty-seventh Article was adopted by the legislatures of the political years 1876 and 1877, and was approved and ratified by the people on the sixth day of November, 1877.

The twenty-eighth Article was adopted by the legislatures of the political years 1880 and 1881, and was approved and ratified by the people on the eighth day of November, 1881.

The twenty-ninth Article was adopted by the legislatures of the political years 1884 and 1885, and was approved and ratified by the people on the third day of November, 1885.

The thirtieth and thirty-first Articles were adopted by the legislatures of the political years 1889 and 1890, and were approved and ratified by the people on the fourth day of November, 1890.

The thirty-second and thirty-third Articles were adopted by the legislatures of the political years 1890 and 1891, and were approved and ratified by the people on the third day of November, 1891.

The thirty-fourth Article was adopted by the legislatures of the political years 1891 and 1892, and was approved and ratified by the people on the eighth day of November, 1892.

The thirty-fifth Article was adopted by the legislatures of the political years 1892 and 1893, and was approved and ratified by the people on the seventh day of November, 1893.

The thirty-sixth Article was adopted by the legislatures of the political years 1893 and 1894, and was approved and ratified by the people on the sixth day of November, 1894.

The thirty-seventh Article was adopted by the legislatures of the political years 1906 and 1907, and was approved and ratified by the people on the fifth day of November, 1907.

The thirty-eighth Article was adopted by the legislatures of the political years 1909 and 1910, and was approved and ratified by the people on the seventh day of November, 1911.

The thirty-ninth Article was adopted by the legislatures of the political years 1910 and 1911, and was approved and ratified by the people on the seventh day of November, 1911.

The forty and forty-first Articles were adopted by the legislatures of the political years 1911 and 1912, and were approved and ratified by the people on the fifth day of November, 1912.

The forty-second Article was adopted by the legislatures of the political years 1912 and 1913, and was approved and ratified by the people on the fourth day of November, 1913.

The forty-third and forty-fourth Articles were adopted by the legislatures of the political years 1914 and 1915, and were approved and ratified by the people on the second day of November, 1915.

[A proposed Article of Amendment prohibiting the manufacture and sale of Intoxicating Liquor as a beverage, adopted by the legislatures of the political years 1888 and 1889, was rejected by the people on the twenty-second day of April, 1889.]

[Proposed Articles of Amendment, (1) Establishing biennial elections of state officers, and (2) Establishing biennial elections of members of the General Court, adopted by the legislatures of the political years 1895 and 1896, were rejected by the people at the annual election held on the third day of November, 1896.]

[A proposed Article of Amendment to make Women eligible to appointment as Notaries Public, adopted by the legislatures of the political years 1912 and 1913, was rejected by the people on the fourth day of November, 1913.]

[A proposed Article of Amendment enabling Women to vote, adopted by the legislatures of the political years 1914 and 1915, was rejected by the people on the second day of November, 1915.]

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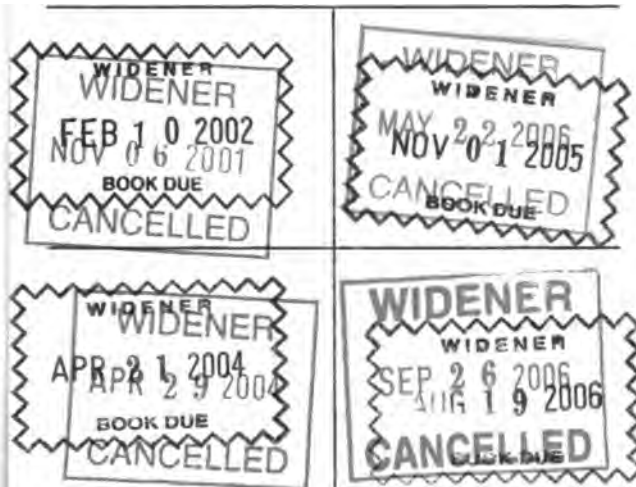
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